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Canada. Royal commission on
employment of fishermen on diesel
locomotives in freight and yard
service on the Canadian Pacific
Railway

Proceedings. 1957.

no. 61 - 63.

A 746

**ROYAL COMMISSION ON EMPLOYMENT OF FIREMEN
ON DIESEL LOCOMOTIVES IN FREIGHT AND YARD
SERVICE ON THE CANADIAN PACIFIC RAILWAY**

(28)
61-63

PROCEEDINGS



DATE: October 22, 1957

PLACE: Ottawa, Ont.

PAGES: 8547 - 8742

VOLUME: 61

E. L. FEATHERSTON
SHORTHAND REPORTER
241 MANOR AVENUE
ROCKCLIFFE PARK
OTTAWA, CANADA

Dress

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October 22, 1957.

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ROYAL COMMISSION ON EMPLOYMENT OF
FIREMEN ON DIESEL LOCOMOTIVES IN
FREIGHT AND YARD SERVICE ON THE
CANADIAN PACIFIC RAILWAY

Proceedings of public
hearing held at Ottawa,
Ontario, Tuesday,
October 22, 1957.

PRESENT:

Hon. R. L. Kellock,	Chairman
Hon. C. C. McLaurin,	Member
Hon. Jean Martineau,	Member
Douglas M. Fraser,	Secretary
A. R. Winship,	Asst. Secretary

APPEARANCES:

C. J. A. Hughes, Q.C.,	Representing the Commission
I. D. Sinclair, Allan Findlay,	Representing the Canadian Pacific Railway Company
David Lewis,	Representing the Brotherhood of Locomotive Firemen and Enginemen

Tuesday,
October 22, 1957.

61 st DAY

MORNING SESSION

---The Commission resumed at 10.00 a.m.

HAROLD McGINN, sworn, examined

BY MR. SINCLAIR:

Q Mr. McGinn, you have given me certain facts as to your service with the company and so on. I am going to read those and would you listen and tell me at the end if they are correct. You entered the service of the Canadian Pacific as a telegraph messenger at Moose Jaw, Saskatchewan in 1939, September; you were a telegraph messenger at Moose Jaw until 1941 and then you became a call boy and checker at Moose Jaw; in 1942 you became a yardman at Moose Jaw.

You left that position at the beginning of 1943 under leave of absence and you joined the air force. You were in the air force until late in 1945 and on your discharge you returned to the company's service as yardman, and later as yard foreman at Moose Jaw.

During the period 1945 through 1952 when you were yardman and yard foreman at Moose Jaw you received leave of absence to enable you to attend the University of Saskatchewan where you graduated with the degree of Bachelor of Commerce. Later you took a post-graduate course at the University of Western Ontario and received your

Master's degree in business administration.

You then became operating assistant on the Prairie Region of the Canadian Pacific, which is a training course put on by the company for employees who may become officers. At the end of that period, commencing in 1954, you went to Lethbridge as yardmaster. After serving seven months as yardmaster in Lethbridge you were promoted, and this would be in June 1955, to your present position of Assistant Superintendent, Winnipeg Terminal; is that correct?

A That is correct.

Q During the Union's evidence some testimony was given with regard to grain inspection by government grain inspectors while cars were in the yards. This was mentioned by Fireman Struthers at Volume 56, pages 7936 to 7938 and 7953 to 7954. It was also mentioned by Mr. Colpitts.

Struthers dealt specifically with an instance in April, 1957, in which grain inspectors had been working on the engineman's side. Apparently a signal to proceed was given but Struthers told the engineman not to move because the grain inspectors were still working on the cars.

In my cross-examination I showed

Mr. Struthers a grain inspection card but he said he had never seen one nor did he know of their existence. Of course Mr. Struthers was a fireman and not a yardman. In view of the fact that I showed that card to him I should like to show it to you and ask you about it. Have you seen one of these cards?

A Yes, I have.

MR. SINCLAIR: I should like to file this card. In the upper left-hand corner it says "I.47" and then states:

"Grain inspectors have finished this train."

EXHIBIT 341 -- Inspection card,
I.47.

BY MR. SINCLAIR:

Q Is this a new form, Mr. McGinn?

A No, it is not. That is normal.

THE CHAIRMAN: Is it a railway card or a Board of Transport Commissioners card?

MR. SINCLAIR: No, this is a railway card.

BY MR. SINCLAIR:

Q Now, in connection with this handling of grain cars that are being inspected in the Winnipeg Terminals, Mr. McGinn, what is your procedure?

A When a train of grain arrives or a

train with grain on it, the cars of grain that have to be inspected -- the grainmen inspect the grain in those cars and when they have completed their inspection a card is placed in the knuckle of the east end car as an indication that that train, that the inspection on that train has been completed. It is also the practice for the way-bills to be taken to the grain inspection office, which is located --

Q Just before you go on to the way-bills. When that card is put in the knuckle of the east-end car, who is it meant for?

A It is an indication to the crews that will be humping those trains that that train has been inspected.

Q You said that would be on the east-end knuckle?

A Yes.

Q At the east end of the cut?

A Yes.

Q The engine would be away down at the west end?

A The west end.

Q You refer to the crews; do you mean the ground crews?

A Yes, who inspect the cars.

Q Who goes and gets this card Exhibit 341, and sees that it is there?

A The ground crew.

Q After they see it is there what do they do?

A That is an indication to them that the train is O.K. to hump.

Q What do they do, do they then start to hump it?

A Yes, they can start to hump it then.

BY THE CHAIRMAN:

Q Who puts the card on the knuckle?

A It is put there by one of the grain inspection men.

Q He is a government employee?

A Yes, he is.

BY MR. SINCLAIR:

Q You were going to say something about the way-bills when I interrupted you?

A The way-bills are taken, the grain way-bills are taken to the grain inspection office by that staff.

Q By what staff?

A The grain inspection staff.

Q By the government staff?

A The government staff. After the grain has been inspected and the way-bills have been inspected those way-bills are returned to the yard office. At that time Form 77, which is a company form used by the yardmen for switching, or at least a record of the train -- that is the purpose for which it is kept --

that record is kept in the yard office on the file and that copy is marked "O.K. for grain" and the time at which it was O.K.'d.

Q What effect does that have on the switching of the grain train? Do they have to have Form 77 O.K.'d by the grain inspectors before they start switching?

A No -- what was that question again, please?

Q Do the crews have to have Form 77 O.K.'d by the grain inspectors before they start switching?

A On occasions we may have rush loads in a train that has grain in it, that is perishable cars or something that has to be moved expeditiously before the grain is inspected. At that time the grain inspectors are notified that we are going into the train to get cars out. So cars can be moved without the train having been inspected in that respect, but cars are not permitted to go out of the terminal without special arrangements having been made with the grain people, that is the government grain inspectors.

Q May I summarize it this way, Mr. McGinn? Your procedure is where grain inspectors have inspected cars to insert one of these cards in the knuckle of the east-end cut. The yardmen finding that are

then in position to switch that cut of grain cars or train of grain cars. Now my question to you, which I may not have made clear, was: if they have that card do they have to have Form 77 also O.K.'d?

A No. The card is an indication that that train has been inspected.

Q If they have not the card can they switch on having a stamped Form 77?

A Yes, they can.

Q Then I think you said there is a third alternative, that is where there is no card or no Form 77 a special arrangement can be made with the grain inspectors?

A Yes.

Q There was also some evidence given by Mr. Colpitts about the grain inspectors being the type of people who walk around a yard and they had to be watched out for. I think the Commission should know whether these grain inspectors receive any safety instructions before they are permitted to work in the yards?

A Yes. They have a yard foreman located at the yard and new employees are instructed in the methods of operation and safe practices in moving about the yard.

Q What new employees?

A New employees who are hired by the Board

of Grain Commissioners to inspect grain.

Q Are those safety instructions given by a government employee?

A Yes. Then in addition to that these new men are assigned to an experienced employee and they accompany him for an initial period after their commencement of employment and they are instructed during that period in safe practices and operations around the yard.

Q Now, turning to another subject, Mr. McGinn. During Engineman Colpitts' testimony Mr. Lewis filed Exhibit 218 concerning certain discipline in connection with a man by the name of Olsen, a fireman. This will be found in Volume 42, page 5952. Mr. Lewis read the information contained in Fireman Olsen's form in that regard.

Further along Mr. Colpitts said that he did not know of the circumstances and I put certain questions to Mr. Colpitts concerning this discipline of Olsen. He said that he did not know. In order to substantiate what I put to the witness I should like to have you deal with Olsen's discipline.

. Do you know the Olsen Case?

A. Yes, I do.

Q. That resulted in 10 demerit marks in September of 1953?

A. Yes, I am familiar with that case.

Q. Can you tell the Commission what transpired in that case and why Olsen was disciplined? Olsen was the fireman?

A. Yes. It was the intention --

Q. What kind of move was involved?

A. There was a movement involved of a passenger coach being heavily impacted against a passenger train, second number eight, that arrived at depot track number seven.

Q. This was switching at the west end of the Winnipeg depot?

A. Yes. The foreman had instructed that the engine follower take the coach westward on the westward main track, and wait in the vicinity of Princess Street shack until the arrival of train second number eight. The engine was headed east, and the coach was located east of the engine - that is on the nose of the engine.

Q. This location is familiar to the Commission, so you can move quickly through it.

A. The engine follower went over to the shack and waited for the arrival of second number eight on track seven. After the arrival of the train Lakaski, who

was the engine follower, walked out and got on the south-east corner of the day coach and gave a proceed signal to the engineman. They moved eastward about one car length, and Lakaski, the engine follower, crossed to the north-east corner of the day coach - that is across the vestibule to the north side - and gave the fireman a proceed signal.

Q. In other words, he moved from giving signal to the engineman, and started to give them to the fireman?

A. That is correct.

Q. Through the vestibule?

A. Yes. He gave a proceed signal to the fireman. When the movement was about 2-1/2 car lengths from the tail end of the train second eight, the engine follower gave a 2-car length signal to the fireman. When it was a little better than one car length from the tail end of the movement he gave a one-car length signal. At about three-quarters of a car length from the tail end of the movement he gave a slow signal. When he realized the train was not going to stop, he gave a stop signal and a violent wash-out.

These signals were called by the fireman to the engineman, but the engineman had his head out the window looking

for signals from Lakaski, not knowing he had crossed over, with the result that there was an over-speed impact made, and a lady passenger on the train was injured.

Q. Who was disciplined?

A. There were four men disciplined: The foreman received ten demerit marks for failing to properly supervise the movement. The engine follower was disciplined ten demerit marks for failing to keep the movement under control. The engineer was disciplined ten demerit marks for failing to stop the movement when the signal or the man on the point disappeared from view. And the fireman was disciplined ten demerit marks for failing to insure that the engine-man heard his signal, or that the engine-man was aware of the signal being given ... with the result that there was an impact.

Q. The next matter I wish to deal with is to be found in Volume 57, at pages 8023 and 8028; there is an exhibit filed in this matter, No. 223. To give a little summary of the evidence, Fireman Cody said that during the Spring of 1956 he was on a yard diesel, on the 24 K to 8K shift, which is known as the yardmaster's tramp. He was with Engineman Pomeranski, and he was making a light movement - his engine running light eastward on the westward

main track at Rugby Junction. He said that a yardman by the name of L. Murphy, who was a member of another crew, was observed on the westward main track about 20 feet ahead of the engine, standing in the middle of the track. Cody said Engineman Pomeranski asked him if Murphy had crossed the track. At this moment Cody saw him right in front of the engineman. Cody said he called to the engineman, applied the brakes, sounded the whistle and Murphy the yardman jumped clear.

What is your comment, Mr. McGinn on that incident?

A. I investigated that incident, and Engineman Pomeranski clearly remembers the incident.

Q. Did you get a statement from Pomeranski?

A. I did, and if I may, I would like to read part of that statement.

MR. SINCLAIR: Mr. Chairman, with your permission I would like to file as Exhibit 342 a statement by S. Pomeranski.

EXHIBIT NO. 342: Statement by
S. Pomeranski.

BY MR. SINCLAIR:

Q. Is this Exhibit 342 a true copy of the statement of Pomeranski?

A. Yes, with the exception, that should be "light".

- Q. The third question in the statement reads:
"Would you please give any details that you
can recall?" In the **second line of the**
answer to that question, the first word is
"right"; you say that should be "light",
so that the sentence will read "We were
returning from LaRiviere Subdivision and
our light engine headed eastward ..." Is
that correct?
- A. That is correct.
- Q. Now looking at Exhibit 342 - you said you wished
to read part of it. Would you do so?
- A. The first question I wish to read is:

"Would you please give any
details that you can recall?"

A. We were returning from
LaRiviere Subdivision and our light
engine headed eastward was routed
down the westward main track to remove
some cars from a train on that track.
I was travelling approximately 10
miles per hour when I observed Yard-
Murphy standing in the middle of the
tracks of the westward main track.
I did not stop when I first observed
him because I expected Murphy to
move clear. For some reason he did
not move and before reaching him I
applied the engine brakes and stopped.

800-441-1000

"Before coming to a stop I also blew the engine whistle.

Q. How far were you from Murphy when you applied the engine brake and blew the whistle?

A. Approximately 20 feet.

Q. Was Murphy in full view of yourself all the time you were approaching him?

A. Yes he was.

Q. Do you recall who was in the cab with you at the time?

A. The fireman was there. I think it T. N. Cody. I recall the fireman drawing my attention to the presence of Murphy.

Q. Did you see Murphy before your attention was directed to him by the fireman?

A. Yes I did."

MR. SINCLAIR: Perhaps I should read to the Commission what Cody said at page 8024:

"The engineer said that he saw the man crossing over and he was in the form of asking me did he get across because he was only about 20 feet ahead I guess, taking into consideration the front of the engine.

"The next thing I just saw him right in front of the engine. So I hollered and the engineer applied the brakes along with blowing the whistle."

BY MR. SINCLAIR:

Q. In your opinion, Mr. McGinn, in the light of this investigation do you think the fireman did or did not avert an accident?

MR. LEWIS: Mr. Chairman, I pointed out once or twice yesterday that I did not think this type of question should be asked. Surely the Commission should have some work left to it to do.

THE CHAIRMAN: I do not think the question should be asked.

MR. SINCLAIR: Very well. What I understand my friend is saying is, the statement speaks for itself and the evidence in the record speaks for itself, and the matter can be argued from that.

THE CHAIRMAN: What your friend says is you should leave something for us to form a judgment on.

MR. SINCLAIR: I am quite happy to do that. Indeed, I would be quite happy to leave the whole matter to you right now without going any further.

THE CHAIRMAN: Are you asking us to agree to that?

MR. SINCLAIR: I would be glad to have you agree to it.

THE CHAIRMAN: Well, the matter is in your hands.

BY MR. SINCLAIR:

Q. Mr. McGinn, there is one further question I might deal with at this time. It has to do with another matter relating to Fireman Struthers, Volume 56, pages 7939 to 7953; and there is an exhibit on this, 277. Struthers said about a month prior to when he was giving evidence on June 27, he was working on 6.30-K St. Boniface yard job on a Sunday. That would make it, I take it, around May 27. Fireman Struthers says that his engine, headed south with cars attached to the cab, was engaged in switching cars into the storage tracks located west of the Emerson main track immediately north of Marion Street crossing. The switching moves were being made over the crossover from the running lead to the Emerson main track. At one point the engine stopped on the crossover just clear of the fouling point of the running lead. A signal was given to the engineman to proceed in a southerly direction towards running lead when Fireman Struthers observed a push car loaded with switch material being shoved southward

on the running lead and foul of the crossover on which the engine was standing. Upon hearing the hissing sound in the cab indicating that the brakes were being released prior to moving the engine, Fireman Struthers told the engineman to stop, to avoid striking the push car. He said that if he had not told the engineman to stop he would probably have knocked the jigger off the track and injured the men who were with him.

In the light of that summary, which I hope is fair and accurate, what comment have you on that?

- A. I investigated this alleged incident; I interviewed Foreman Horeback, who was the foreman of the section forces that were responsible for the maintenance in that area, which is number three section. Foreman Horeback states that the normal work week for his crew is Monday to Friday, and that during the period from May 1st to June 15 they were not required to engage in any work on that section on Sunday.
- Q. Is work ever done by section forces on Sunday?
- A. It is, yes.
- Q. Is that emergency work?
- A. It is.

MR. LEWIS: Now ...

MR. SINCLAIR: The witness said it was the normal work week. My friend seems extremely sensitive.

MR. LEWIS: Mr. Chairman, my friend is really asking for it. He has asked a number of questions this morning which are obviously wrongly phrased and improper. I have sat still and not interjected, but when this witness said their work is not done on Sunday, and then Mr. Sinclair asks, is it an emergency ... My friend can ask what kind of work it is. Surely he knows he does not need to make any comments. I think I have been much more patient than sensitive.

THE CHAIRMAN: Well, Mr. Sinclair, you know how the questions should be put. I suppose, looking at what the witness said, a normal work week is five days and there is no work on Sunday; then, he is asked was work done on Sunday. Strictly speaking the proper question is, "Under what circumstances?" I take it the objection is because you suggested the answer by asking if it was emergency work. I suppose that is it, Mr. Lewis?

MR. LEWIS: Yes, Mr. Chairman.

THE CHAIRMAN: Well, obviously Mr. Lewis is right this time.

MR. SINCLAIR: Oh, he is right more than this time, I will grant him that.

BY MR. SINCLAIR:

Q. If work is done by a section force, how is it recorded?

A. In time books, and --

Q. "and" you were saying--

A. And an examination of the time books showed that there was no work performed other than doing the normal time during that period. I also contacted the roadmaster in charge of No. 1 Paddington Section. This crew has a tool-house located in the vicinity where this near mishap is alleged to have occurred.

Q. You are hard to hear, Mr. McGinn. Will you speak up.

A. I say that No. 1 Paddington Section have a tool-house which is located in the vicinity where this accident was supposed to have occurred.

Q. Yes?

A. He examined the books at my request and stated to me that there was no record of any work having been performed by that section crew during the period from May 1st until June 15.

Q. No work had been performed when?

A. On a Sunday. In addition to that, I examined the engineman's dockets for the period from April 16 until June 15, and I learned that

Fireman Struthers had worked a 6.30 St. Boniface job on Sunday, May 5th, and that was the only Sunday on which he had worked a 6.30 job in St. Boniface. The engineman on that occasion was Engineman Pollock. I contacted Engineman Pollock and he stated to me that he recalled having worked--

Q. Just a moment. Did you take a statement from Engineman Pollock?

A. Yes, I did.

Q. Have you got it with you?

A. Yes, I have.

Q. I have not made a copy of this, but it is available. Maybe you had better say what was in it.

A. I asked Engineman Pollock if he recalled this incident described by Fireman Struthers. He did not recall the incident although he did recall having worked an occasional trip--

Q. Mr. Lewis has suggested that it might be better if the whole statement were read. Would you read the statement?

A. Yes:

"It has been reported that an accident occurred during the month of May 1957 in which the 630K yard assignment was involved. The facts of the incident are as follows: The 630K yard assignment was switching cars northward from the running lead

over the crossover to the Emerson main track and into the storage tracks which parallel the Emerson main track. At one point during these movements the 630K yard engine was located on the crossover track and just at the fouling point of the running lead when a southward movement was about to be commenced. Prior to the start of this southward movement however it was observed that a push car loaded with switch material had moved southward on the running lead immediately south of Marion Street crossing.

It was also reported that the south switch of the crossover had been lined normal for the lead and the push car moved afoul of the crossover track. Action was taken to prevent the southward movement of the engine with the result that there was no mishap.

Q. You were a regular engineman and working the 630K yard assignment during the month of May 1957. Do you recall such an incident occurring during that period?

A. No, I do not recall any such incident.

Q. Do you recall any such incident occurring while working with Fireman J.E. Struthers?

A. I recall Fireman E. Struthers working the occasional spare trip. However, I do not recall any such incident occurring while working with him."

BY MR. SINCLAIR

Q. You have read this evidence, Mr. McGinn. Do you recall whether Struthers said who this engineman was on the day this incident was taking place according to him?

A. No, he did not.

Q. In checking his sheets as to his trip tickets, did you find, anywhere where he worked, who were the enginemen he did work with? Have you got a list of them? On the St. Boniface 6.30 you said he worked only one shift, is that it?

A. On Sunday, yes.

Q. Is there any time around there he could have worked?

A. He worked a Friday in St. Boniface on the 10th, that is, the 10th of May.

MR. LEWIS: The 10th of May.

THE CHAIRMAN: The 10th of May.

MR. SINCLAIR: On a Friday.

THE WITNESS: Yes.

MR. SINCLAIR: What time was that?

THE CHAIRMAN: 6.30.

THE WITNESS: That was the 6.30 shift.

BY MR. SINCLAIR:

Q. I should, maybe, so that there will be no doubt about this part of it, read the questions and answers of Mr. Lewis and the witness concerning this.

"Q. Do you remember another incident that you had to do with the St. Boniface yards?

A. Yes, I do.

Q. Do you remember when that took place?

A. Well, I don't remember the exact date but it was approximately a month ago.

Q. Do you remember what day of the week?

A. I remember it was on a Sunday. It was the 6.30 St. Boniface Yard job.

That is on page 7939.

There is one other matter I wish to deal with, Mr. McGinn, and reference is made to it in Volume 42, pages 5984 and 5991, also in Volume 43, pages 6127 to 6130, and also Exhibit 221. This has to do with H and G Yard leads. Engineman Colpitts gave evidence concerning backup operations. The Commission will recall that they observed this also. It was at the Winnipeg yard, I think, when we were there there about 4 o'clock one afternoon. About

thirty-five cars were pulled out of the freight shed, and the engine went up to the conjunction of G and H yard leads and, really, went on to "I" yard lead, isn't that so?

A. I yard.

Q. And the Commission will recall they had a cut of thirty-five cars, and the positioning of the cars, and at that time the fireman got off the engine and threw the switch. Mr. Colpitts in his evidence said that when you pull thirty-five cars out of there and go on to the convergence of G and H yard leads, that the fireman got off, threw the switch, and because he had gone around the curve and could not see the ground crew behind him, the fireman from the ground acted as a signal passer between the ground crew down near H lead up to the engineman around the curve on I yard. Mr. Colpitts was there when the Commission were there and he again explained it to them on the ground. Do you know this location, Mr. McGinn?

A. Yes, I do.

Q. What is the situation there today as to switching?

A. In what respect, Mr. Sinclair?

Q. In respect to the passing of signals. They were all passed on the engineman's side before. There is no dispute about that.

A. Yes.

Q. What part is the fireman having to play in signal passing?

A. There is a foreman ground crew on that job and they have been instructed that it is the engine follower's responsibility to go down and line that switch when required and if necessary to stay there and pass signals. I should explain that on occasions the fireman was lining that switch and passing signals, but it was strictly a convenience move.

Q. A convenience move to whom?

A. To the ground crew, and I am quite confident there is no loss in time. The switching is not expedited by the use of a fireman. For that move, the ground crew can position themselves to take care of any requirement such as lining that switch and relaying any signals that are required.

Q. Would one of the yardmen - What would he do to be in position?

A. It would be a case of riding back with the engine, and if they had sufficient cars that they were going to be out of sight of the ground crew, which would be down the east end, that is the only time the engineman would be out of view, if the cars were down there, and he would remain there until the engine came back into view, probably a very short period of time. As they got rid of cars off the

east end, the engine would move back into view.

Q. What is being done here is pushing and pulling cars into the freight shed?

A. That is correct.

Q. And in working the pushes and pulls into the freight shed, how many men are now on the ground crew in the freight shed area at the H lead?

A. We have a crew of four men, as I say, but three men can do it there quite easily.

MR. LEWIS: When the Commission was there, they will recall, if I may bring it to mind, that the four men stayed down at the freight shed rather than have one of them come up to the G and H yard convergente, and the "I".

That is all.

BY MR. LEWIS:

Q. Mr. McGinn, do you have any agreement with the Brotherhood of Trainmen which requires you to have four men - a four-man crew - for this I yard job?

A. No, there was no special agreement regarding that job, Mr. Lewis.

Q. That is why I am rather at a loss about the last answer. You said there was a four-man crew there but that three men could do the job easily. We have on that particular job a list compiled down at the freight shed. By programming his work he can move back there and be in a position to do the switching

and be there when the switching is done.

Q. That means there is a need for a four-man crew, if this other work which you speak of needs to be done?

A. We did put that fourth man on there for that, and it was strictly a case of being in position at the right time. By programming the work, the fourth man is up there at the west end of the shed tracks when the switching is being performed.

Q. I am very sorry, Mr. McGinn, but if you have to program the work so that the fourth man is there when the switching is being performed, that would suggest to me that the four-man crew is necessary and that it cannot be done with three men.

(Page 8576 follows)

A The work can be done with three and was at one time.

Q But you put in the fourth man on your own and had no collective agreement which required you to do it.

A That is right. But the man going down there is accustomed to sitting in the office and getting information. We have deadlines for pulling those cars at 1600 or in other words at 4 o'clock in the afternoon, for pulling the three shed cars. If the man is down there and abides by the deadline he can be back in position when the switching is to be done.

Q And it was to meet that deadline in the main office. There has been a statement made here that he has four men on and then he says three men could easily do it?

A Three men could do the switching.

Q But there is another reason to get out there?

A This other man goes down and gets lists, and by getting back for the switching we would have four men there when it is being done.

Q Getting back to the Olsen incident, exhibit 218, I asked the reporter to be good enough to be ready to read back, and he brought me a typed answer. This is what you said:

"There were four men disciplined: the foreman received ten demerit marks for failing to properly supervise the movement. The engine follower was disciplined ten demerit marks for failing to keep the movement under control. The engineer was disciplined ten demerit marks for failing to stop the movement when the signal or the man on the point disappeared from view. And the fireman was disciplined ten demerit marks for failing to ensure that the engineman heard his signal, or that the engineman was aware of the signal being given."

Where did you obtain that information?

A From the company files. I did not conduct the investigation myself. I went through and examined the results of the investigation that was conducted immediately after the mishap.

Q Exhibit 218 which you must have looked at and which is the form which gives the discipline or sets the discipline and the reason for it, says that Olsen was disciplined not for failing to ensure the engineman heard his signal, or was aware it was being given, but for his failure to take prompt action to stop

switching movements when signals disappeared from view.

THE CHAIRMAN: Are you speaking about the engineman?

MR. LEWIS: No. The fireman, sir.

THE CHAIRMAN: What signal disappeared from his view?

MR. LEWIS: I gather from exhibit 218 signals were being given to him and disappeared from his and he failed to take steps to stop the movement.

THE CHAIRMAN: It was the trainman who had been on the front of the coach on the engineer's side, according to the witness, who had moved over to the front of the coach on the fireman's side who was giving the signals at the time the engine failed to stop.

MR. LEWIS: That is precisely what I am after.

THE CHAIRMAN: What does exhibit 218 say?

MR. LEWIS: Exhibit 218 simply does not jibe, as I understand it, with the evidence of the witness. Exhibit 218 says, in respect to Olsen and the fireman:

"Please be informed that your record has been debited with ten demerit marks for violation of the provisions of rule 7 (a)"

You will recall that is the rule that says if vision is not clear you have to stop --

"Failure to take prompt action to stop switching movements when signals disappeared from view resulting in rough coupling train 2/8 track 7, Winnipeg station, causing injury to passenger, September 27, 1953."

THE CHAIRMAN: That is obvious that the man on the front of the coach had gone out of the fireman's view.

THE WITNESS: This form is in error. The fireman was able to see the signals as they were given.

BY MR. LEWIS:

Q How do you know it was in error? Were you there?

A I am referring to the evidence I read as a result of the investigation.

Q This form was made out by your officers and given to Mr. Olsen?

A Yes. That is my understanding.

Q What do you mean by saying as you recall the file you think the form is in error?

A I do not think, I read the man's statement and he saw the signals.

Q You read his statement?

A Yes.

Q And that is your recollection of it?

A Yes.

Q And so this form which was given to him is wrong?

A Yes.

Q That is a company form?

A Yes.

THE CHAIRMAN: Did you bring the file with you?

MR. SINCLAIR: Perhaps you could read the fireman's statement.

MR. LEWIS: Perhaps we could look it up at lunch time.

MR. SINCLAIR: Maybe he could read it in and have re-examination.

MR. LEWIS: My friend suggests reading it in now. I would prefer, if it isn't inconvenient, to look at the file.

THE CHAIRMAN: It is your cross-examination, Mr. Lewis, and you can conduct it as you see fit.

MR. LEWIS: What I am saying is perhaps I may have permission to look at it either during the recess or recall Mr. McGinn if necessary.

THE CHAIRMAN: All right.

BY MR. LEWIS:

Q You were a yardman?

A Yes.

Q In Winnipeg?

A No. In Moose Jaw.

Q There would not have been any grain inspection there, would there?

A There is some grain inspection, but just for the local mill. It is very limited.

Q Do you know whether at any time a train with grain cars has been switched in error before the grain inspection had been completed?

A There could have been. Not to my knowledge.

Q But there could have been? Is that right?

A Not to my knowledge.

Q I beg your pardon.

A I say not to my knowledge.

Q You do not know of any but it might happen?

A Yes.

THE CHAIRMAN: There is a system and I suppose there can be errors in carrying out the system.

BY MR. LEWIS:

Q I do not know how important this is, but you said something about government grain inspectors having a yard foreman?

A Yes.

Q In the Winnipeg yard?

A Yes.

Q Also employed by the government?

A Employed by the Grain Board.

Q He is there all the time, is he?

A Yes. They have a foreman on each shift.

Q He is on the shift all the time?

A Yes.

Q He supervises all the grain inspectors who come on that shift?

A Yes.

Q May there be grain inspectors who may be inspecting more than one cut of cars?

A You mean at one time?

Q Yes.

A There could be.

Q And he is over all of them wherever they may be working?

A Yes.

Q There is only the one foreman?

A Yes.

Q You say the grain inspectors are given instructions in safety by the foreman, by this yard foreman we are speaking about?

A I presume so. Yes.

Q There is just one yard foreman in each shed and he would be the man?

A Yes.

Q Do you know what instructions he gives?

A No. I haven't been there when instructions were given.

Q Is there any guidance as to the instructions given about safety?

A That guidance is there for them if they want

it, but to my knowledge they have not been issued any. They^{may}/have received some, but not to my knowledge.

Q It is possible these foremen are older than you are and have got their guidance a long time ago?

A They are older than I am.

Q They may have got those instructions before you came on the job?

A That is possible. Yes.

Q You took the statement of Pomeranski yourself?

A Yes.

Q How did you take it? What did you do? Did you write down word for word what they told you?

A Yes.

Q How is it done?

A I ask the man questions and I take down whatever his answer is.

Q Word for word?

A Word for word.

Q Do you have to ask him to repeat again because you cannot follow him or do you take shorthand?

A No. I do not take shorthand. I write it in longhand.

Q In the case of a long answer like the one where you said give me any details you can recall, in a long answer like that do

you have to ask him to repeat it two or three times in order to get it down?

A No. It is taken progressively. I ask a man what the circumstances are and he explains it and I write it down, whatever his answer is. It is a normal procedure for taking statements.

Q I was just wondering. We were reading from the Laval subdivision, and so on. Were you getting it slowly so you can write every word he says or is it a summary?

A In outlining the procedure followed there it is word for word what he has given me. Yes.

Q You take it word for word?

A Yes.

Q He goes slowly enough for you to be able to write it down word for word?

A Yes.

Q You heard Mr. Sinclair read from the record where the fireman Cody told the Commission the engineer had seen this man Murphy and that the engineer asked him whether Murphy had gone off the track.

Q Did Mr. Pomeranski mention to you the fact that he had asked Murphy this question?

A No.

Q There was no reference to that at all in the conversation between you and Mr. Pomeranski?

A I do not recall asking Pomeranski that.

Q Going back to Olson again for a moment, to this Olson instance. Perhaps it would be much more sensible for me to defer that for a moment.

MR. SINCLAIR: Subject to being recalled, you may stand down.

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GEORGE L. PHILLIPS, sworn, examined

BY MR. SINCLAIR:

Q Mr. Phillips, perhaps I might sketch in your service and then at the end ask you whether it is correct. You entered the service of the Canadian Pacific June, 1920, as an operator, Alberta District; from 1920 to 1932 you were operator at Lake Louise, Calgary, and in the Transportation Department, Winnipeg; from 1932 to 1935 you were Travelling Car Service Agent, Prairie Region; from 1935 to 1937 you were Acting Assistant Superintendent and Assistant Superintendent, Minnedosa, Manitoba; from 1937 to 1939 you were Assistant Superintendent, Wilkie, Saskatchewan; from 1939 to 1941 you were Assistant Superintendent, Vancouver Terminals; from 1941 to 1942 you were Assistant Superintendent, Winnipeg Terminals; from 1942 to 1944 you were Superintendent, Moose Jaw, Saskatchewan; from 1944 to 1950 you were Superintendent, Vancouver Division, and at present you are the Superintendent, Kootenay Division at Nelson, B.C. Is that correct?

A Yes, that is correct.

Q Can you hear me well enough, Mr. Phillips?

A Yes, I hear you quite well.

Q This is a hard room to hear in even if

one has as keen ears as young
Mr. Lewis.

MR. LEWIS: That will not get you
anywhere at all.

BY MR. SINCLAIR:

Q In Volume 58, pages 8220 to 8227, certain
evidence was given by Conductor Armstrong
dealing with his recollection of a con-
versation that he said took place between
himself and you, Mr. Phillips, at Yahk,
British Columbia. Conductor Armstrong
said he arrived at Yahk on a fruit train
on June 29, 1957, and was met there by
Superintendent Phillips who was accompanied
by the Division Master Mechanic and Road
Foreman of Engines. He said the fruit
train consisted of 37 cars to be set off
at Yahk.

According to Mr. Armstrong, Mr. Phillips
asked him if they were going to work on the
engineman's side, to which he replied that
they were going to work as before, on the
fireman's side. A short time later he
said that he asked Mr. Phillips if he
realized that this was an important fruit
train that he had been told to keep on
time, and he said that Mr. Phillips replied,
"Yes, Armstrong, we are going to do it my
way today but this will only be for a couple
of weeks, then you can go back to your way."

I am quoting there from the transcript at page 8221. I think it was the Chairman, although I am not sure, who then asked Mr. Armstrong what that meant and he said that that meant going back to giving signals to the fireman. Whoever asked that, that was not quite cleared up.

Do you remember this conversation with Armstrong at Yahk on June 29?

A Yes, I remember it.

Q What have you to say as to what Armstrong said about that conversation?

A That is not the conversation as I recall it.

Q What is the conversation as you recall it?

A Well, we went to Yahk on the morning of June 28, at least I left Yahk on the morning of June 28 accompanied by Road Foreman of Engines and the Master Mechanic to observe the switching out of Conductor Armstrong's train with signals passed direct to the engineman.

On arrival at Yahk the train, instead of stopping at the switch east of the main line the head-end trainman took up his position in such a way that we knew it was an arrangement for passing signals direct to the fireman.

The movement was stopped and Conductor Armstrong came back to the east end and he was asked if he was going to switch

in accordance with the instructions he had received.

Q What instructions?

A He was asked --

Q I want to follow that up. What do you mean in accordance with instructions he received, what instructions? You said that you asked if he was going to switch in accordance with instructions he received; what instructions?

A About a week previously he had received instructions, verbal instructions from the Assistant Superintendent that in future all signals would have to be passed direct to the engineman.

On this particular occasion he did not answer the question. He said, "Do you want me to back in the yard?" I said, "Yes, I want you to back in the yard and I want you to make the switch properly."

He turned away to make arrangements; he had to protect a road crossing at the west end of the yard and as he turned away he said, "Don't you know this is a fruit train?" I said, "Yes, I know it is a fruit train."

Those are all the instructions I gave him about switching at that particular moment. I then turned to the Road Foreman and Master Mechanic and

I said, "Will you instruct this crew as to how to make this movement passing signals direct to the engineman?" And after the train had backed into the yard they took the crew across the track to the opposite side of the switching lead and showed the men the position they should take and how the move should be made.

I was on the lead myself at that time and Conductor Armstrong made one additional remark. He said, "It is too bad that a conductor with all my experience has to be shown how to switch a fruit train." I said, "Well, we are going to be making tests around here for a couple of weeks and I expect to see you and everybody else passing signals direct to the engineman." That was all the conversation I had with him at that time.

Q Now, did you come back at any time after that to Yahk when Conductor Armstrong was there?

A Yes, on July 8, in company with the Road Foreman of Engines and the Master Mechanic I went back to Yahk at about approximately the same time to watch a set-out of an additional number of cars. I think it was about 36 cars by the same crew, with the exception that the head-end trainman

was a spare man.

I arrived just a little late for this movement, but when I got to Yahk I found out they had made the move in a different way from the previous move. No. 1 track happened to be clear so they stopped short at the west end and cut off the cars and pulled into No. 1 at the west end.

When I got there it was just before the movement and the head-end trainman was cutting off the engine to go back for his train. I asked the head-end trainman how the move had been made and he said, "I was on the fireman's side on the ground and Conductor Armstrong passed me the signal and I passed it to the fireman." I said, "Well, do you know you have been instructed that you are supposed to pass signals direct to the engineman?" He said, "No. "

So we waited until Conductor Armstrong arrived and I said to him, "Why are you still passing signals on the fireman's side?" He said, "Oh, I was not passing signals on the fireman's side, I was passing them to the trainman who was in the cab of the engine and he was passing them direct to the engineman; he was in the cab of the engine and he would pass

them direct to the engineman."

He turned to the head-end trainman and tried to have him change his story to say he was in the engine cab, but because the trainman had already admitted to me that he was not, that he was on the ground, Mr. Armstrong dropped the subject entirely.

He said to me, "Do you want to pass signals direct to the engineman on all occasions?" And the Master Mechanic took over from there.

Q Did you answer that question?

A I had no further conversation with him.

Q This was again at Yahk?

A That is right.

Q Have you had any further developments as a result of this incident with Mr. Armstrong? Was the matter gone into any further?

A Well, we had a letter from the local Chairman of the Trainmen at Cranbrook asking that a bulletin be posted so that everybody would understand what should be done. I took this up --

Q Done about what?

A About passing signals direct to the engineman. I took this up with my senior officers and I was given permission to post a bulletin. That bulletin was posted on August 27, and this is the file copy.

Q You had better read it.

A This is to Conductors and Enginemen,
Bulletin Book, Kootenay Division. It
reads:

"In switching movements the safe
and proper practice is to give
signals directly to the engineer.
This practice, followed in yard
operations, is also applicable to
switching performed by road crews.
Conductors are responsible for
organizing their work and positioning
themselves and their trainmen
accordingly."

Q That is in the same language as the
bulletin which was filed yesterday as
Exhibit 331. You say that that bulletin
was issued when?

A August 26.

Q 1957. Since that bulletin, Mr. Phillips,
have you had any discussion with other
conductors on your division concerning
switching, and have you had any difficulty
about having them carry out your instruc-
tions?

A Generally speaking, no. Only two con-
ductors provided any resistance at all,
and those were Conductor Walter Brunner,
and Conductor Armstrong. Generally
speaking, outside of that, we have had
no difficulty whatsoever since the bulletin
has been posted; there has been no trouble
at all.

- Q. What has been your experience in your operations since that bulletin, as to time?
- A. Well, there has been no change in our operations at all. I have access of course to morning reports, and I am checking regularly delays of freight trains, and making personal observations, and I have found no cases where there have been any additional delays due to the posting of that bulletin.
- Q. That is all.

MR. LEWIS: I have no questions.

JAMES HADDOW, called and sworn.

BY MR. SINCLAIR:

- Q. Mr. Haddow, I am going to read to you, as I have done to other witnesses, your background, and you can tell me whether it is correct.

After coming to Canada from Glasgow you entered the service of the company as a call boy at Lambton in 1920. You were a call boy at Lambton until 1923, when you became a fireman, and you were a fireman from 1923 to 1931 working in various places on the Ontario district. Then for 10 years, during the depression period, you were not with the railway - you were taking jobs outside of the industry -

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and you returned to the Canadian Pacific as a fireman in 1941, at the beginning of that year. You remained as a fireman until October, 1944.

In October, 1944 you started working as a spare engineman on the Ontario District, and you remained as a spare engineman in various parts of the Ontario District until 1947. In 1947 you became a mechanical instructor on a mechanical instruction car until February, 1951, when you were appointed Assistant Superintendent at Trenton on the Trenton Division. In June, 1953 you were appointed Assistant Superintendent Schreiber Division, headquarters at Chapleau?

A. That is right, sir.

Q. Mr. Haddow, you were requested to make some investigation concerning certain instances?

A. Yes.

Q. Who made that request?

A. It was made by the company.

Q. There is nothing wrong with saying who asked you to do it?

A. It was made by the members of our company who are travelling with the Commission.

BY THE CHAIRMAN:

Q. Let us not take so much time. Who asked you to do this?

A. Actually it was requested by Mr. Sinclair

and Mr. Fraine.

Q. That is the answer.

BY MR. SINCLAIR:

Q. Did you carry out the investigations?
How were you asked to investigate these matters?

A. I was given a little information. I was simply told what were the approximate dates of the incidents, and from that I carried out the investigation.

Q. Were you told what had taken place, or was stated to have taken place?

A. Yes. The full details were not made available to me, of course. It involved Fireman Desbois.

MR. SINCLAIR: Mr. Chairman and Members of the Commission, Fireman Desbois gave evidence at Volume 55, pages 7845, 7847 and 7856 to 7860, concerning an incident which I have summarized in this way.

It occurred at Eureka, Ontario, March 31, 1957. Desbois said that a freight train, No. 90, with four diesel units en route eastward, Chapleau to Cartier, pulled into siding to meet a westward train. As the train was pulling into the siding, said Desbois, the engineman's view of the track ahead was obstructed by a curvature to the left; and head trainman, said Desbois, was looking to the rear inspecting the train. Fireman Desbois said he saw a

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maintenance-of-way push-car on the siding ahead of the train, and called to the engineman to stop. He went on to say there was a small child on the push-car. The man in charge of the push-car attempted to push it into the back track, and in doing so derailed it at the frog. Desbois said he and the head trainman walked ahead and re-railed the push-car.

BY MR. SINCLAIR:

Q. What is your comment on that, Mr.

Haddow?

A. I investigated this matter to the conclusion and find that there is no foundation in the allegations of Fireman Desbois.

Q. Did you take some statements?

A. Yes, statements were obtained from the members of the crew, Desbois excepted.

Q. Did you take a statement from the section foreman?

A. Yes, the Section Foreman Peter Matthew Dzioba.

MR. SINCLAIR: Mr. Chairman, I would like to have this statement of Mr. Dzioba filed as Exhibit 343.

THE CHAIRMAN: Is this not Exhibit 344?

MR. SINCLAIR: No; the other statement was read into the record, rather than given an exhibit number.

EXHIBIT NO. 343: Statement by
P.M.Dzioba
filed.

BY MR. SINCLAIR:

- Q. Looking at Dzioba's statement, Mr. Haddow, would you read what portion of it you think in particular should be directed to the attention of the Commission?
- A. I would direct your attention to page 2, centre of the first paragraph, in which Dzioba says:

"On the last trip to the box car about 4.45 p.m. my daughter accompanied me, walking along beside me on the pathway to the north of the siding. At the car I loaded the baby's high chair, a rocking chair and 3 or 4 cartons of kitchen ware, dishes, etcetera."

- Q. Mr. Lewis says that the reporter is having difficulty following you. Do you want me to read to the end of that paragraph?

THE CHAIRMAN: You read it.

MR. SINCLAIR: Continuing:

"I had begun to push the car west on the siding towards the house when I saw and heard a train approaching from the west - entering the siding. At that time the push-car was just about at the back track

"switch. I pushed it clear of the points, threw the switch for the back track, and then pushed it eastward into the back track and clear of the points. I then reset the switch for the siding and continued pushing it clear. At the No. 11 Spring frog of the back track the front or east wheels de-railed."

Further along towards the bottom of the page, Mr. Haddow, you have drawn attention to this part of the statement. It is the last long paragraph:

"I could quite easily have re-railed the push-car myself without assistance and had it clear in the back track, without the possibility of it being struck by the approaching train. As a matter of fact, I was about to do this when the Trainman called to me that he would hlep. I do not consider that a hazardous condition existed and am sure that I could have cleared the train even if it had never stopped at all. My daughter was subjected to no danger as she was standing clear on the pathway to the north of the back track and I most certainly could have

1. 1914

2. 1915

3. 1916

4. 1917

5. 1918

6. 1919

7. 1920

8. 1921

9. 1922

10. 1923

11. 1924

12. 1925

13. 1926

14. 1927

15. 1928

16. 1929

17. 1930

18. 1931

19. 1932

20. 1933

21. 1934

22. 1935

23. 1936

24. 1937

25. 1938

26. 1939

27.

28. 1940

"stepped clear had the need arisen.
Had there been any doubt in my mind
about clearing the train I would have
run towards it and given stop signals."

BY MR. SINCLAIR:

Q. Do you know Mr. Dzioba?

A. No, not personally.

Q. I notice from the first page here he is
a section foreman.

A. I presume you mean Peter Dzioba?

Q. Yes.

A. Yes, I know him personally.

Q. He is a section foreman, and is 26 years
of age?

A. That is right.

Q. You know him, do you?

A. I do.

MR. SINCLAIR: Mr. Chairman, I wish
to file as Exhibit 344 a statement by Engineman
William J. Carnahan.

EXHIBIT NO. 344: Statement by
Engineman
William J. Carnahan
filed.

BY MR. SINCLAIR:

Q. Do you know Engineman Carnahan?

A. Yes.

THE CHAIRMAN: What is the part of
this exhibit to which you want to call attention
Mr. Sinclair?

MR. SINCLAIR: Part of page one.

Maybe I could read it:

"As there was no particular haste in entering the siding and as I am always conscious of the necessity of observing yard speed on tracks other than the main track, I controlled the movement into the siding very slowly, certainly not faster than 4 m.p.h. The engine and possibly 12 cars had entered the siding when I heard either the Fireman or Trainman say 'Better stop - there's a hand car ahead'. The throttle which was then in No. 1 position was reduced to 'idle' and I made a service application using the automatic brake valve. The movement came to a stop within 75 ft."

THE WITNESS: That is right.

MR. SINCLAIR: Mr. Chairman, as Exhibit 345, I would like to file a statement by Head Trainman Edgar Collin.

EXHIBIT NO. 345: Statement of
Edgar Collin
filed.

BY MR. SINCLAIR:

Q. Which part of that do you wish to draw attention to - the first page, towards the bottom?

A. Centre of the last paragraph.

Q. Maybe I can read it:

"Approaching Eureka, the block signals all displayed 'clear', indicating that our meet was not yet out of Metagama. A stop was made clear of the west main track switch at this point and I set the switch for the siding. I stepped to the opposite or south side and Engineman Carnahan slowly started the movement into the siding. I then assumed my former position seated in front of the fireman, looking forward, and when the engine and possibly 12 cars had entered the siding, I observed in the distance a track vehicle which I first thought to be a hand car. I could see a man working about it, but it was still a considerable distance away. Fireman Desbois, sitting behind me, apparently saw the obstruction about the same time and I am not sure whether he or I called Engineman Carnahan's attention to it."

Is there any other part of the statement you want in?

A. That is all from that one, yes.

Q. Another incident referred to by Desbois occurred in the Chapleau yard. This is referred to in Volume 55, pages 7847 to 7854.

THE CHAIRMAN: If you are turning to a new subject, we will take a few minutes recess.

--- Recess.

BY MR. SINCLAIR:

Q. Now, Mr. Haddow, I had just, I believe, started to mention the further incident that Mr. Desbois dealt with at **Volume 55**, pages 7847-54. Mr. Desbois said that around 4.30 p.m. on April 2, 1957, the yard diesel working the 4 p.m. to 12 p.m. shift in the Chapeau Yard backed into a yard track with a caboose and two cars attached to the cabin of the locomotive. The yardman was riding the leading car of the movement on the engineman's side, and going around the curve the switchman had disappeared momentarily from the engineman's view. A maintenance of way gang was engaged in changing rail in the vicinity of where the movement was taking place. Desbois said he saw what he took to be a washout and he called to the engineman to stop the movement. The brakes, he said, were applied, and the movement came to a stop when the leading car was between two or three car lengths from the point where the gang was working.

Did you investigate that?

A. I did, sir.

Q. Did you take any statement?

A. Yes, from all members of the crew.

Q. Do you wish to draw the attention of the Commission to anything?

THE CHAIRMAN: Will this make one of the exhibits?

MR. SINCLAIR: Yes, Exhibit 346, statement of George Weedon, Engineman in charge of Yard Engine 6527, and Exhibit 347, Statement of Thomas Murphy, Yardman.

EXHIBIT No. 346- Statement of
George Weedon.

EXHIBIT No. 347- Statement of Thomas
Murphy

(Page 8606 follows)



THE CHAIRMAN: What is the part of Exhibit 346?

THE WITNESS: Page one.

MR. SINCLAIR: Start off with the word "after", down to the bottom of page one and over to the next page to the end of the paragraph. Also further down on that page the second last answer. Will you read that from exhibit 346.

THE CHAIRMAN: Would you read it, Mr. Sinclair?

MR. SINCLAIR: "After the trailing car had passed the dividing yard switch east of where the men were working, we proceeded westward on the south lead and in a direction towards where the track men were working. At that time, as I recall, one of the yardmen, from the side ladder of the now point car, gave me a back-up signal, in response to which I started the movement westward. I noticed that the switch on lead track No. 4 was lined up and the point car had just started into this track when fireman Desbois, in a normal tone of voice said 'stop'. In acknowledgment I closed the throttle to 'idle', applied the independent brake and made an ordinary stop. At this time I had my head out the side window looking in the direction of movement and just as the movement came to a stop I received another back-up

"signal from the yardman on the point car who, by this time, had alighted to the ground."

And then towards the bottom of the page:

"A. Yes, this statement is true to the best of my **recollection**. I am certain that no mishap or near mishap occurred. It seems to me most probably that Fireman Desbois saw a member of the track forces making a gesture with his arm and mistakenly interpreted it as a stop signal."

J. Haddow

Now, what part of exhibit 347?

Here it is. This is on page one right at the bottom:

"I had observed, as we passed track No. 4 at the east end, that the switch was set for this track. In response to my back-up signal the movement was started westward. I assumed my former position on the side ladder of the then point car. I cannot recall whether the movement came to a stop or not as we approached track no. 4, as we had several switches to make in order to take the incoming van off the train, and set it out on the north lead. In other words these movements entailed several stops and starts and I cannot remember anything unusual about the movement at this time. However, I do know that no dangerous or near dangerous condition existed while we were making the initial and later movements into track No. 4.

There were track men working nearby but none of them were exposed to any danger and from my vantage point on the leading car of the movement, I certainly was in a position to see and act on any unsafe or hazardous condition. I can assure you there

was no such condition. Throughout the balance of the shift there was no discussion on any near mishap with my fellow employees. I am satisfied that had there been anything unusual the subject would, without question, have been discussed, particularly at our meal period.

Q. Did you see anyone moving or waving their arms in the vicinity of the east end of track No. 4, as if giving a stop signal?

A. No. As previously mentioned there was a large gang of men employed in track work in that area and while frequently they could be seen gesturing with their arms, I saw no one give what could be termed as a stop signal."

Now, in both of these incidents you mentioned that you took statements from the other crew. Why are you not referring to them?

A There is no useful purpose. It does not enlighten anything. These appear to be the ones which give the most information.

MR. LEWIS

BY MR. LEWIS:

Q Mr. Haddow, I understood you to say you were not given any details about these

incidents when you were asked to investigate?

A I was given ~~brief~~ details. They just simply occurred on a certain day and there was a brief outline. The transcript apparently had not yet been available.

Q I am interested, for example, in exhibit 344. This is one of your questions:

"Could you conscientiously say that the obstruction presented by the push-car at Eureka created a dangerous or hazardous condition?"

Before you answer, the answer here is apparently not the engineer's. It is quite emphatic he wouldn't think it was ^a dangerous situation. On what information did you base that?

A These push-cars on the sidings, while not common, do frequently appear in going into sidings and in most cases we are looking for such things.

Q You said you were not given any details but that it happened on such and such a day, the engine number, and there was an incident in which Mr. Debois was involved?

A Yes. It was easy to trace. What we had to do was to find out where Debois was and the fact that there were four units specifically mentioned gave me a clue. I worked from that because it is unusual to have four.

Q What made you ask the question as to whether the incident was dangerous or hazardous?

A Because it had been put to me in that way, that it was a dangerous and hazardous condition which had apparently occurred there as it involved a young girl.

Q You read parts of the statement of William James Carnahan, exhibit 3⁴⁴. Would you mind referring to it. On page two of that statement I think Mr. Sinclair read up to the end of the fourth line, "movement came to a stop within 75 feet." The next sentence reads:

"From my position seated looking forward, I could see no hand car or obstruction ahead because of the left-hand curve at this point."

A That is right.

Q You heard Mr. Sinclair say that Mr. Debois had said there was a left-hand curve and the engineer could not see it?

A Yes.

Q And the engineer confirmed that?

A Yes.

Q I have not had time to read it all over but my memory is that in exhibit 3⁴³ Mr. Dizioba stated -- and correct me if I am wrong -- is that this push-car was at no time foul of the track. Is that right?

A I do not believe that is the exact wording.

Q In effect he says, on page two, that he had the push-car clear. For example at the end of page 2 he says:

"At that time the push-car was just about at the back track switch. I pushed it clear of the points, threw the switch for the back track, and then pushed it eastward into the back track and clear of the points."

A Yes.

Q That would mean it was not foul?

A No. Pardon me, it was foul. The corner of the push-car was foul of the movement of the locomotive.

Q That is what engineer Carnahan says?

A Yes.

Q Would a section foreman have the authority to line switches?

A Yes, other than main track switches. When it is necessary in clearing switches particularly in winter time and to open and close switches.

Q He can line them?

A Yes. They also take precautions to see they are no expected trains.

Q If I remember correctly there is a rule in your safety rules which says no one can line switches without authority?

A That would be the maintenance and way I assume.

Q Rule 1201 on page 8 of exhibit 49 states that employees must be authorized and

instructed before using track switches?

A Yes.

Q And these section foremen have that authority?

A Yes. They are fully qualified.

Q Just to clear up the record because it may be a little confusing, the engineer states the fall-end trainman was Raoul Lemieux. Mr. Debois said the fall-end trainman at the time was Colin.

Apparently they switched. Lemieux started as front-end trainman and then Ramsay.

A Yes. They reversed positions.

Q And you went to the rear?

A Yes, and Colin at the front end of the engine.

Q I notice in connection with Exhibits 344 and 345, and the same is true of Exhibit 343, Mr. Haddow, there is an answer by Mr. Carnahan which stretches well over half a page on page 1 and well over half of the typing on page 2, a very lengthy answer.

A That is correct.

Q The same thing is due roughly of Exhibit 345?

A Yes.

Q There is a very long answer in one case, it would be almost a foolscap page if it were on the one page?

A That is right.

Q How did you take that answer?

A The men were brought in and asked if they wished to have representation. There being such a large number of them they were dictated. A stenographer was brought in and they were dictated. I did the dictating. They told me the story and to put it in readable English so it could be understood, they were typed. Then following the typing the men were permitted to read them. They were given a copy and given time to study them and make any corrections if necessary in them. There was in this case a few minor changes made, that is on the advice of the person making

the statement.

Q They told you the story and you then dictated it?

A In their presence.

Q In their presence, to a stenographer?

A Yes.

Q She typed it out and you then let the man see it?

A Yes.

Q And make any suggested corrections he wanted, is that right?

A That is right.

Q You did not argue with him when he made some corrections?

A No.

Q Or suggested corrections?

A No. Most of the suggestions in these particular cases were minor ones involving the operation of locomotives. For example, Engineman Weeden in his statement as to the operation of a yard locomotive, in the original statement he said he had moved the throttle from No. 1 and No. 2 positions to idling position. He then realized after having been given the statement that he was in error because it was a yard locomotive and there is no distinct throttle positions, simply on and off positions. He made that correction. They were given any opportunity to make any corrections they wished to.

Q I am not questioning that, I was just interested in the procedure. This is a long answer he gave you. Would the witness give it to you without any interruptions from you whatever?

A No. I can assure you there was no demands on my part.

Q I do not suggest there were any demands on your part, but I want to know whether you interrupted him when he was giving his answer?

A There would be interruptions because it would be given in spasms, as it were. He would not go through the entire story because he could not fit it together to begin with. He had not paid too much attention to it as he considered it unimportant.

Q In other words, you would ask him the question first and he went along?

A I was trying to bring the man along.

Q To bring the story out?

A That is right.

Q Were you alone when you took the statements?

A Other than the stenographer.

Q There was not any officer with you at the time?

A No, I am alone at Chapleau.

Q Each of these employees would be giving

his statement individually, or would there be a number of them together?

A They were brought in individually because at the time they were not all in. I had phoned their homes and contacted them and asked if they would come in and bring a representative at that time as I would like to see them. Some I talked to personally and others I left a note for them to come in. During the night they would be called and to come in at their own convenience.

Q You took the statement from each individual, there were not two or three there at the same time?

A That is so.

Q From each man one at a time?

A Yes.

Q There was not more than one there at the same time?

A No.

Q You just took them individually?

A That is all.

MR. LEWIS: I think that is all.

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ARTHUR W. GRANT, sworn, examined

BY MR. SINCLAIR:

Q Mr. Grant, as you have heard before, I will read in your background and then you can say at the end whether it is correct. You entered the service of the Canadian Pacific as a wiper at Minnedosa in 1939. You worked as a wiper until 1940. In the beginning of 1941, January, you received leave of absence and you joined the air force as a trainee and later as a radar mechanic.

You spent pretty near five years as a radar mechanic with the air force, having received training on diesel standby equipment from the air force which was supplementary power units for the radar installations. I think you spent some considerable time in Egypt?

A Yes.

Q Then on your return from the forces in 1946 you went back as fireman on freight and passenger service and became an engineman in 1949, running on the Manitoba District from 1949 until 1955 when you were promoted to Road Foreman of Engines, with headquarters at Brandon, Manitoba?

A That is right.

Q Now, Mr. Grant, and members of the Commission, the matter I wish to deal with

was dealt with by Mr. Colpitts whose evidence will be found in Volume 43, pages 6075 to 6079, and in Volume 44, pages 6193 to 6199, and pages 6234 to 6237. I wish to refer also to the evidence of Fireman Sankow in Volume 57, page 8059 and the following page.

The evidence given by Mr. Colpitts was agreed to, or the same evidence was given by Mr. Sankow.

The evidence was that on April 3, 1957, an eastbound freight train with diesel units 8508 and 8519 arrived at Souris from Estevan with the second unit cut out due to a defective traction motor.

Colpitts and Sankow said that they took the engine over from the incoming crew at Souris and were going into Winnipeg with the train. The train that came in was a half train and it was going to be filled out at Souris and the full train taken from Souris to Winnipeg. The reason it was a half train into Souris was that only one unit was working.

When they were at Souris the train was met by Master Mechanic McDonald and Road Foreman Grant, which is yourself. They said you cut out the traction motor on the leading wheels of the trailing unit and then the train went to Winnipeg

with both units working but with the leading traction motor of the second unit cut out.

I should now like to read two extracts from the testimony given by Mr. Colpitts. So there will be no question about it I shall read from the transcript. The first is an examination by Mr. Lewis of Mr. Colpitts, and I read from page 6079 in Volume 43:

"Q. What happened to the alarms as a result of that.

A. We were instructed at Souris, before we left, at least I was there and the fireman was told to make repeated patrols back to this second unit to see that everything was all right, and any time we stopped to be on the ground to make sure that all wheels of the second unit were turning.

As I understood the explanation, the gear had not been trimmed off sufficiently to ensure that it would not engage the traction motor that was cut out and they were afraid it would stick or seize and skid the wheels.

Q. Who gave Mr. Sankow these instructions to go back frequently, I think you said, go back to the

"second unit and make sure that all was all right.

A. The road foreman --

Q. Mr. Grant?

A. Mr. Grant."

Then the testimony of Mr. Sankow, Volume 57, page 8059, where he is being examined by Mr. Lewis as follows:

"Q. Was anything said to you or to Mr. Colpitts with regard to this amperage?

A. Well, I was instructed to watch the wheels as we pulled out of the yard at Souris and to go back frequently to the second unit as we left from Souris to Winnipeg. That was my duty, to patrol the second unit because there was a possibility of sliding wheels and reversing traction motors."

THE CHAIRMAN: Sankow was the fireman?

MR. SINCLAIR: Sankow was the fireman.

THE CHAIRMAN: And Colpitts was?

MR. SINCLAIR: The engineman. The Commission will recall that I put certain things to Mr. Sankow and subsequently filed as an exhibit a statement that he had given.

BY MR. SINCLAIR:

Q I have read to you extracts from the transcript of the testimony given by

Mr. Colpitts and Mr. Sankow concerning this diesel. I should say that immediately after giving the testimony that I read Mr. Sankow said to Mr. Lewis that Mr. Grant was the man who gave him the instructions about patrolling.

THE CHAIRMAN: You want to hear from this witness what he has to say about it?

BY MR. SINCLAIR:

Q What do you say about it?

A I did not give any such instructions.

BY THE CHAIRMAN:

Q Do you recall the conversation and, if so, what was it?

A I cannot recall any conversation I had concerning this matter.

BY MR. SINCLAIR:

Q What do you mean, concerning this matter?

A These alleged instructions I was supposed to be giving Mr. Sankow.

Q He said that there was a possibility of sliding the wheels and reversing the traction motor. Did you tell this man to patrol in order to guard against reversing the traction motor?

A No; there is absolutely no possibility of such a thing occurring.

Q What about sliding wheels; did you tell Sankow to patrol on account of sliding wheels?

A No, there is no possibility of that occurring.

Q Colpitts said that as he understood it the gear had not been trimmed off sufficiently to ensure that it would not engage the traction motor that was cut out and they were afraid it would stick or seize and skid the wheels. What is your comment on that?

A No. Since the pinion was properly trimmed off and the blocking bar was in place to ensure that the pinion would not engage the main gear. This is a standard piece of equipment.

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Q. Was that done on this occasion?

A. Yes.

Q. You know that?

A. Yes.

Q. Did you cut out the motor yourself?

A. Yes.

Q. What was the cause of the trouble on that unit, Mr. Grant?

A. It was due to a seized bearing in the traction motor, causing the traction motor not to turn. It was remedied by cutting off a certain number of pinions in order to allow the wheels to turn on that motor.

Q. What would have been your action, Mr. Grant, if there was a possibility of sliding wheels and reversing traction motors, or as Mr. Sankow said, they were afraid it would stick or seize and skid the wheels? What would your action have been?

A. Had there been a possibility of this, I would have accompanied the unit or delegated some responsible mechanical man.

Q. Mr. Grant, if you had cut out the traction motors -- in these proceedings we were told, when you were going to start up you had to get down on the ground and see whether the wheels were turning freely. Is that right?

A. Yes.

Q. Is that the same kind of situation we are

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dealing with in this instance at Souris?

A. Actually the motor had been cut out some 150 miles back from this, and the wheels turned all that distance. There was really no immediate worry about a thing like that.

Q. Mr. Colpitts said that when they came in they went down through the yard, and as I recollect his evidence, he was instructed by you not to exceed a certain amperage as he pulled down through the yard?

A. That is correct, yes.

Q. What instructions did you give him about the amperage?

A. I told him not to exceed 400 amps.

Q. Why did you tell him that?

A. Well, there is a possibility in the electrical arrangement of these machines that they will make a backward transition if the amperage is exceeded. It is purely a device to protect the main generator; and on this disabled or defective unit that could have happened.

Q. Now as to a backward transition, let us clear the record up: Is a backward transition a reversing of the motors?

A. Absolutely not.

Q. Has backward transition anything to do with the sliding wheels?

A. No.

- Q. You gave him those instructions, you say, and were you able to complete the work you wanted to do at Souris before they moved the engine?
- A. Well, the first move into the yard I did not have the work completed, but prior to leaving Souris the work of cutting the motor out was completed.
- Q. That is what happened?
- A. That is true, yes.
- Q. Did you accompany the movement out of Souris?
- A. Yes.
- Q. How far did you go?
- A. A distance of about five or six miles.
- Q. Where did you ride?
- A. I rode the lead unit.
- Q. Did anything take place while you were going out of the yard, or in that five miles?
- A. Well, in order to keep the amperage down on the lead unit it was necessary to operate with less than full throttle. The result was the train did not accelerate as fast as it should have done so. I suggested to Colpitts I would make another alternation on the defective unit, and it would allow him to operate the lead unit at full throttle, which I did.
- Q. What did you do?
- A. I went back and adjusted the circuit to the governor of the second unit.

Q. Did anybody go back with you when you did that?

A. The fireman. We were travelling at a very low ^{rate} /of speed and the fireman, purely out of curiosity, went back with me. He observed what I was doing back there.

Q. Did you come back up to the lead cab?

A. Yes, I went back to the lead unit. I told him to operate this unit now as normal, to operate it with full throttle, and to ignore the 400 amps. instructions I had given him previously.

Q. Was there any other conversation between you and Colpitts concerning the matter?

A. Well, he asked me what I had done, and I tried to explain it to him. I told him that as the fireman had watched me do this, at the first stop, if the instruction was of any value to him, he should go back and the fireman might show him what had been done.

Q. Mr. Grant, was Mr. MacDonald with you when you were doing this work on these units at Souris?

A. Yes.

Q. Did he or did he not in your hearing give any instructions to Colpitts or Sankow?

A. He did not. I was with him, as far as I can recollect, the whole time and he never gave any instructions. It is an understanding

we have, that I am in charge of any operation like this, and I give the instructions.

Q. You say an understanding we have - who has?

A. Mr. MacDonald and myself.

Q. At my request you have read the transcript of all the evidence of both Colpitts and Sankow dealing with this matter. Is there anything further you wish to say concerning it to the Commission, or have you covered it sufficiently?

A. I think so.

Q. Will you answer my friend?

BY MR. LEWIS:

Q. Mr. Grant, you just can't recall any instructions to either Colpitts or Sankow about ~~watching~~ the unit?

A. No; I know that I never gave any instructions.

Q. You know that you never gave any instructions to either of them?

A. No.

Q. Have you known Colpitts for some time?

A. Yes, quite a number of years.

Q. Do you think Mr. Colpitts normally tells the truth, in your experience?

A. I have never had a lot to do with Mr. Colpitts. I have known him, we have talked

together, we have written our mechanical examinations together, but I don't know him other than that.

Q. From your knowledge of him would you say that he normally tended to tell the truth or otherwise?

A. I wouldn't be prepared to say.

Q. You would not be prepared to say?

A. No.

Q. Do you know Mr. Sankow?

A. No, I don't - apart from that one day; I probably have seen him before, but I can't even remember what he looks like.

Q. But you are suggesting to this Commission that the evidence which Mr. Colpitts and Mr. Sankow both gave about your having given them instructions is false?

A. Yes.

Q. When you cut out a traction motor in this way are you suggesting that there is no possibility of the wheels sliding or seizing?

A. They have a very solid blocking device which insures that there is no danger of pinions engaging. They are definitely separated to start with, cut off with a torch, and the pinion is blocked to ensure its remaining stationary.

Q. You say they are definitely cut off - they are cut off with a torch?

A. Yes.

Q. That is what you did?

A. No, that was done outside of Estevan; that had been done previously. The cutting out I did was electrically.

Q. You will correct me if I am wrong, but I have a vague memory of having seen in some of the manufacturer's manuals some warning that if traction motors are cut out, one must be careful that the wheels are turning freely. Am I wrong about that, Mr. Grant?

A. Well, if a traction motor is cut out, the inspection has to take place on the ground immediately the motor is cut out, to insure that it is properly cut out.

Q. Why do you make the inspection?

A. Well, it is a double check on the work being done.

Q. You said a moment ago in answer to a question of mine that because these things are separated and so on, there is no danger of there being any seizing or sliding of the wheels. Why would you want to inspect from the ground if there is no danger?

A. There are the two - the cutting out electrically and the cutting out mechanically. This is in reference to cutting out mechanically, separating the pinions, is it not? You are referring to the

separating of the pinions?

Q. What did you do in this case, was that a mechanical cut out?

A. This is an electrical cut out of the motor.

Q. When you cut out electrically is there no danger of the wheels sliding or seizing?

A. No.

Q. Under any circumstances?

A. I can't think of any.

Q. And you would not inspect the wheels afterwards?

A. No, I would not be concerned about them at all; there is no danger of them skidding.

Q. Excuse me for my ignorance, but what do you mean by cutting out mechanically and cutting out electrically?

A. Cutting out the motors mechanically would mean separating the drive pinion on the motor from the drive pinion on the wheels. Cutting out electrically would mean separating the generator from the motor itself. It is cutting the power off to that motor, which is what I did.

Q. I wish I knew more about these things. If you cut out mechanically, don't you also have to cut out electrically?

A. No.

Q. Do you mean the power continues to go there?

A. No, the unit is isolated; in other words,

it does not generate power. The engine can be shut down, or the engine can be left idling, but it does not generate power.

Q. In either case, it does not generate power, whether you cut it out mechanically or cut it out electrically, is that right?

A. No - the unit itself will generate power, but the motor that is cut out will not have power going to it when it is cut out electrically.

Q. You cut out only one motor?

A. Yes; the other three are in service.

Q. The other three are in service?

A. Yes.

Q. To use my own terms, if I may, you turn the power off as far as this one motor is concerned?

A. Yes.

Q. And the power continues to flow to the other motors?

A. Yes.

Q. What were you talking about, the mechanical cutting out?

A. The mechanical cutting out is purely a separation of the drive pinion of that motor with the receiving pinion on the wheel.

BY THE CHAIRMAN:

Q. A pinion in each case is a gear or wheel?

A. Yes.

BY MR. LEWIS:

Q. Does that also cut off the power to that motor?

A. No it does not.

Q. That is, cut off the power the motor created.

A. ~~Th~~ere is no power delivered to that motor. If there were, of course the pinions would probably re-engage again; but the whole unit is isolated, and the unit itself does not deliver power.

Q. In that case you isolated the entire unit?

A. Yes.

Q. No power being delivered to any of the motors then?

A. Yes.

Q. In this case you cut out one motor?

A. Yes.

Q. And the other three ...?

A. The other three were accepting power.

BY MR. LEWIS:

Q. And you are suggesting to this Commission that when you do that there is no danger of a wheel sliding?

A. Yes.

Q. And that is your experience on that point?

A. Yes.

Q. If you at that time cut out one of the traction motors, Mr. Grant, would that have any effect on the alarms with regard to wheel slippage?

A. Yes, it would. Wheel slip alarms on two motors would be in service on that unit.

Q. And the wheel slip alarm on the other two motors would not, is that right?

A. That is right.

Q. So if you wanted to be sure there was no wheel slip on one of the two motors or in both the wheels of the two motors which were cut out and which the alarm would not indicate, you would have to inspect them, is that right?

A. An inspection has already been carried out previous to this. It had come some 150 miles.

Q. From where to where?

A. Bienfait to Estevan and Estevan to Souris.

Q. With these motors cut out?

A. With those motors cut out mechanically.

That is the only danger of slipping, from the proper mechanical cutting out of the motors, and that had already been carried out. We were not concerned about that.

- Q. I think there was some evidence that on occasions the wheels might slip on the unit even if the mechanism was cut out because of a wet rail or some other condition of that sort?
- A. That is the cause of wheel spinning. The wheel would turn at a higher rate than the other wheels.
- Q. Wheel slip - I am sure evidence was given that that might happen--
- A. There is a difference between slipping and sliding in this particular case as we apply it. The way we understand it, in slipping the wheels are spinning, the wheels spin, at a higher rate of speed than the other wheels of the unit.
- Q. And it did not matter, you are trying to say to the Commission, that there might not be any wheel slip alarms to the engine crew?
- A. No, there is no possibility of wheel slipping.
- Q. None?
- A. No.

MR. LEWIS: I may take three or four minutes longer. I am quite ready to finish before lunch or break off now if the Commission prefers.

THE CHAIRMAN: Oh, if you will only be three or four minutes we had better carry on.

BY MR. LEWIS:

- Q. I do not think Mr. Sinclair reached this point with you, Mr. Grant, but at page 8059 of Volume 57 I asked Mr. Sankow:

Q. At any time before you got **under**
from Souris
way/did or did not Mr. Grant or Mr.
MacDonald speak to Mr. Colpitts or
yourself?

Mr. Sankow's answer was:

A. Yes, there was conversation as to
the possibilities of reversing the
traction motors with the remaining
traction motors that were cut in on the
second unit. There was a possibility
of skidding the wheels due to heavy
amperage on the second unit due to the
heavy train and the heavy grade as we
pulled out of **Souris**.

You do not recall any such conversation, is that
right?

A. No, he is entirely mistaken about that.

There is no possibility of motors reversing.
It is incorporated in the design of the unit.

Q. I beg your pardon?

A. The design of the unit is such that it will
not allow it.

Q. What about the skidding of the wheels due to
the heavy amperage on the second unit on a
heavy train on a heavy grade?

A. There is no possibility of it.

Q. And you do not recall any such conversation
between either you or Mr. MacDonald with
either Sankow or Colpitts on that point?

A. That is right.

Q. And both Mr. Colpitts and Mr. Sankow are mistaken when they gave the Commission that evidence, is that right?

A. Yes.

Q. In fact I would gather from the evidence you have given, Mr. Grant, that you ^{just no} had conversation with them at all.

A. I did not have a lot; there was the instruction I gave the engineman concerning holding the unit to 400 amps, but after that the only other conversation I can recall was concerning the blocking out of the governor of the second unit.

Q. Which you did when you were on your way?

A. Yes.

Q. And I think you said that that conversation was merely telling the engineman that if he was interested the fireman could show him what you had done?

A. That is correct.

Q. That is all the conversation you had with him?

A. That is all I can think of.

Q. You gave no other instructions to the engineman?

A. No.

Q. He could just go ahead so long as he kept it under 400 amps, is that right?

A. That instruction only applies to the unit when it is moving slowly. As the speed

builds up the amperage drops of its own accord.

Q. Did anyone ask you whether you were going straight through to Winnipeg or not?

A. I cannot recall anyone asking me.

Q. Did you have any particular duty to perform at that time aside from this engine you were on?

A. We were running a test on 953. It was not very important. The arrangements were that I was to go out on 953 that morning.

Q. Those were the arrangements?

A. Yes, we had arranged to do that.

Q. And you did that?

A. I cannot recall. I am not sure. I think I did.

Q. **You cannot recall?**

A. I cannot recall going out on 953.

Q. Can you recall what you did after you dropped off five or six miles out of Souris?

A. Mr. MacDonald was waiting at the highway crossing with a car and I dropped off and walked over to him - I walked over to the car.

Q. Mr. MacDonald was not with you for those five or six miles?

A. No, he drove the car out. The crossing is on the road to Brandon, and he was waiting for me.

Q. And you don't remember telling the engineer and, or, the firemen about your plan to drop off at that crossing because you had to be on 953? You don't remember that conversation either?

- A. I cannot recall it. Pardon me, I believe I did tell Colpitts that I was getting off at Newstead right beside the crossing because Mr. MacDonald was picking me up. He knew I was dropping off there.
- Q. Because there would not be any stop there otherwise?
- A. Well, there is a heavy grade out of there and the train never passes through there at any speed.
- Q. Do you remember what you did when you got off the train? Did you go straight to the car?
- A. Yes, I did. I walked straight over to the car.
- Q. You did not look at the engine at all? You did not look it over in any way?
- A. I cannot recall looking it over. We looked the train over as it went by. Mr. MacDonald had his window open. I cannot recall looking specifically at any one thing.
- Q. So that what Mr. Sankow says at page 8060 of Volume 57 --

"As Mr. Grant dropped off he was running alongside the diesel watching the wheels and at this same time I had to stand on the side of the diesel making an inspection--"

When he says that he is again mistaken?

- A. Yes, he is.
- Q. You did not walk or run alongside the diesel?
- A. No, there is just a narrow highway crossing. There would not be room to run. I am not too

certain about whether there is any ballast there or not or whether it is built up very high, but I would not run alongside an engine; there was no need of it.

Q. To your memory, you did not stand and look at it, even?

A. No, I went straight across to the car.

Q. You went straight across to the car, and when Mr. Sankow says you watched the diesel going by he is wrong again?

A. Yes.

Q. That is your recollection?

A. Yes.

Q. Did you notice whether Mr. Sankow, the fireman,-- did you notice where he was when you got off the train, or, rather, the engine?

A. I cannot recall where he was; I cannot recall whether he was in the cab or where.

Q. Have you any comment on his statement to this Commission that he was standing on the steps - the handrails of the diesel making an inspection of the wheels -- I am combining two of his answers -- as he had done during his inspection? Can you recall him doing that?

A. No, I cannot.

Q. Can you be positive he did not do that?

A. I cannot be positive, no. I cannot recall him doing it, though.

Q. Well, during the five or six miles before you dropped off the engine had he done it at any

time before you got off the engine at all?

A. No. He did come back with me but that is the only time I recall him being on the running board.

Q. You don't recall him getting on the rails and watching the wheels during those five or six miles?

A. No.

MR. LEWIS: That is all, thank you.

BY MR. SINCLAIR:

Q. Just one question: When the diesel whose mechanism was cut out at Bienfait went from Bienfait to Estevan to Souris, was there any person other than the regular crew on any of the units?

A. Yes, Locomotive Fireman Lark from Estevan.

Q. Where was he riding?

A. He rode the back unit all the way.

Q. While you were out at Souris did you know what you were going to do there?

A. Yes.

Q. It had been arranged what you were going to do?

A. Yes, it had been arranged to cut that motor out at Souris.

Q. When you told Mr. Lewis that mechanical and electrical cutouts were different, are they entirely separate procedures?

A. Yes.

Q. Do they or do they not have different results?

A. Yes, by solely cutting the motor out mechanically

that unit is not in service.

Q. And I think the evidence Mr. Colpitts gave was that that was the situation going into Souris?

A. That is right.

Q. And coming out of Souris was that the situation?

A. No, the other unit was put into service with the exception of one motor.

BY THE CHAIRMAN:

Q. Do I understand that if you cut out a motor the mechanism continues to work but does not do any effective work?

A. No, there is no power supply, but any motor if it is cut out mechanically alone we have to isolate that unit, cut the power from it.

Q. I am just thinking about cutting out the motor mechanically. Isn't it the current from the generator that drives the motor?

A. Yes.

Q. Then if you don't cut the motor out electrically it continues to be driven?

A. No, the unit is isolated.

Q. When you talk about a unit, that word has been used here to speak of a locomotive.

A The unit is a locomotive.

MR. SINCLAIR: He means the whole unit.

THE WITNESS: Yes. The excitation, in isolating a unit, is cut off to the generator of that unit so it does not develop power.

BY THE CHAIRMAN:

Q How many motors in a unit?

A Four in this particular type.

Q Then you cut out the whole four motors?

A Yes; -- isolated. By isolating you cut out all four motors. The unit is no use for pulling purposes.

Q It just doesn't work?

A That is right.

Q Is there a difference between isolating the unit electrically and cutting out a motor electrically?

A Cutting out one motor electrically will allow you to use the other three.

Q What do you do when you cut out one motor electrically? Do you isolate it from the generator?

A Yes.

Q There is just no current supplied to it?

A Yes.

Q Before you do that current is supplied to it?

A Yes.

Q And it continues to revolve?

A Yes.

Q That is what I started at. If you do not cut out the motor electricially it continues to revolve. Is that right?

A It does if the power is supplied to it.

Q I thought when you used the words "you cut out the motor electrically" that that meant you deprived it of power?

A That is right, sir.

Q Then it does not revolve?

A That is correct.

Q And it doesn't do any work?

A That is correct.

Q If you don't cut it out electrically it continues to revolve?

A Yes.

Q But it doesn't do any effective work if it is cut out mechanically?

A That is right.

--- The Commission adjourned at 12.50
until 2.20 p.m.

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Tuesday,
October 22, 1957.

AFTERNOON SESSION

---The Commission resumed at 2.20 p.m.

WILLIAM R. NICHOL, sworn, examined

BY MR. SINCLAIR:

Q I will read into the record the information you have given to me about your service with the company and then when I have finished you can tell me if there are any corrections or additions you wish to make.

You joined the company's service July 30, 1923, as a call boy at London, Ontario. Between 1923 and 1924 you held that position. In July 1924 you became a checker, and then in the periods from 1924 to 1940, taking off the times when there was no work, you were a checker, a train clerk, head checker, relieving chief clerk, yardman and spare yardman, and then yardman and yard foreman. Then from 1942 to 1950 you were yard master, all in London?

A The date is July 31 when I entered the service.

Q Then in 1951, January, you were appointed Supervisor of Loss and Damage Prevention

for the Eastern Region of the Canadian Pacific. You held that position for about nine or ten months when you were promoted to Assistant Superintendent at Smiths Falls Division. You held that position until February, 1954, when you became Assistant Superintendent, Montreal Terminals. You held that position until May 1956 and as of June 1, 1956, to the present time you have been Assistant Superintendent at Windsor, Ontario, having jurisdiction on the London Division particularly, and also assigned to special duties from time to time?

A That is right.

Q At my request, Mr. Nichol, you made a number of switching tests?

A That is correct.

MR. SINCLAIR: The first one that I wish to file, Mr. Chairman, is a memorandum concerning a switching test by Mr. Nichol at Orr's Lake, Galt Subdivision.

EXHIBIT 348 -- Switching test,
Orr's Lake.

BY MR. SINCLAIR:

Q Looking at Exhibit 348, which is your memorandum of a switching test at Orr's Lake, you will note I have inserted at the top of this where the Union's

evidence on this matter and the exhibit are to be found and the resumé of what Fireman Hopkins said about it. From there on it is your effort. What do you wish to draw particularly to the attention of the Commission, Mr. Nichol?

A I wish to draw to their attention that the move can be made without the use of the fireman as a signal passer.

Q In two ways, I take it?

A In two ways it can be made.

Q I notice on page 2 of Exhibit 348 that you have a note there. Would you mind reading that?

A (Reads):

"The assistance of rear crew members is required whether fireman is used as signal passer or not. No difficulty in giving signals direct to engineman and in doing so the train crew are not in a hazardous position."

Q You have read the evidence of Mr. Hopkins as to how he explained the move could be made at Orr's Lake. I think he said he observed the move there. Have you any comment on the way he said the move could be made by using the fireman?

A Yes, I have. If I remember it correctly, he used the engineman until he started

back into the siding to a point marked "gravel" on the sketch that he drew.

Q That is Exhibit 272.

A When I made this test I found that the signals could not be conveyed to the engineman in the manner Mr. Hopkins described as the track takes a curvature to the left beyond the switch spur and it is necessary for two men to take 22 cars with the trailing car clear of the spur switch.

Q Why cannot one man do it?

A Well, he cannot get off and ride the point and give the signal because he has to go 10 car lengths east and south to relay the signal to the engineman.

Q Could he get into a position where he could do it with the fireman?

A By walking up, I presume he could by walking up on the fireman's side. He could walk up to get on the point car as he described, but he said definitely he was on the engineman's side to bring the movement back.

Q Of the various ways that this move can be made, by walking up to the fireman, as you have now said is a possibility, or of the other two moves you have described, which would prefer if you were going to switch there?

- A It would depend on the conditions;
they are about the same.
- Q What are the same?
- A The moves are about the same. The
only thing is you turn the engine.
- Q What moves?
- A No. 1 and No. 2 here.
- Q But I gave you three alternatives, to
the fireman or either of the other two?
- A I would not use the fireman.
- Q Then of those two what would you do?
You say it is about the same. Go on
from there.
- A It is about the same. All movements of
gravel out of this pit are west. It is
going for new highways and such like.
The crew is called for the eastward train
out of London and they know they are
going to have to take a load back.
- Q You mean back west?
- A Back west. So they have been turning
their engine at Ayr, seven miles west
of Orr's Lake and backing up to Orr's
Lake. All switching is then done on
the engineman's side with the engine
headed west.

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W.R.Nichol

Q. That is Move 2 as described in Exhibit 348?

A. Move 2. There is really no difference in the move. Depending on conditions, he might have been able on his way back to get into London a little bit quicker if he turned his engine on his way up - that is, if the yard at Ayr is clear, and he could wye his engine. He could take advantage, if it is clear.

Q. Is there anything else you wish to say on Exhibit 348?

A. No, I believe that is all I have to say.

MR. SINCLAIR: Mr. Chairman, I would like to file as Exhibit 349 Mr. Nichol's switching test at Guelph yard.

I may say, Mr. Chairman, when Mr. Hopkins was on the stand, and also when the exhibits were filed, and also about the last exhibit 348, when the Commission was at Galt there was some suggestion of going into Orr's Lake, but as there was no highway in there and it involved a long walk, I said I would cover it with a witness, rather than ask the Commission to go in there. The one at Guelph was dealt with by Hopkins, there was some question about it, and I said I would cover it by testimony.

EXHIBIT NO. 349: Switching test
by W.R.Nichol -
Guelph yard.

BY MR. SINCLAIR:

- Q. Will you look at Exhibit 349, Mr. Nichol - that is your switching test at Guelph yard. I have set out the Union's evidence, and summarized it. From there on Exhibit 349 is your responsibility. Is there anything in particular you wish to draw the attention of the Commission to, in regard to Exhibit 349?
- A. The only thing I would like to draw to the Commission's attention - and this may have been an oversight on Mr. Hopkin's part -- he stated in his evidence that the move was made from the time they stopped at Allen's Crossing, with a maximum of ten cars, with all signals being given on the fireman's side to the fireman. With the three men positioned at the crossing as stated, he could not get the move started.
- Q. What do you mean by that?
- A. Because you can't see the engine.
- Q. You can't see any part of the engine?
- A. No, no part of it. He first come into view with the engine and six cars - that is when it first comes in to view. While Mr. Hopkins said he had ten cars, I am inclined to think, if the signals were given on the fireman's side, that he had less than ten cars.

Q. Are you saying that it is possible with less than ten cars, but if you have ten cars you have to use the engineman?

A. That is exactly it.

Q. Now can you make the move no matter how many cars you have or can you not?

MR. LEWIS: May I interrupt, so that I may understand what the witness is saying.

BY MR. LEWIS:

Q. I thought you said if the three men are at the crossing you can't see the engine at all, either the fireman or the engineman?

A. That is right.

Q. You can give signals to the fireman and you can to the engineman, but you can't if all three are at the crossing - you couldn't give signals to either one of them.

A. As Mr. Hopkins stated, you can't get the movement started.

Q. That is what I understood.

A. That is right.

BY MR. SINCLAIR:

Q. With ten cars is it possible to re-position your men so that you can get it started by giving a signal to the fireman? Is it possible there to do it?

A. It would be possible to do it, if you space them out in the same manner as you did on the engineman's side; but the three

men would not be at the crossing.

Q. You have explained why in your view the fireman is not required, and the movement can be made by setting out the way it was done - that was the way you actually did it?

A. Right.

Q. How are the crews doing it at this time, at Galt?

A. My observations have been that they are working that way. If I could clarify myself it is an exception that you would back ten cars down from that yard. The point he brings the car from is where the set-offs are made by other trains.

Q. That is down the Long siding?

A. At the Long siding.

Q. Which is on Exhibit 271.

A. For both east and west he usually goes down and switches the cars out, and then he pulls them down into the siding, and puts what he wants into the west end of the shed, and then comes around and switches into the east.

Q. Is there any difficulty about giving signals to the engineman if you put the cars into the west end of the shed?

A. None whatever - the engine is headed east.

Q. Then you run around the cars, do you?

A. That is right.

Q. Instead of running around them at the

Long siding, you bring them up and run around them at the freight shed?

A. He might hang on to some of the cars he has and put them away before he runs around into the shed track from the west end, in place of the east end.

Q. During my cross-examination of Mr. Hopkins, and as was shown on the sketch filed by Mr. Lewis, there was in this location a wye. Mr. Hopkins admitted that if you turned the engine on that wye there would be no difficulty in carrying out the move. I just wanted to recall that to the Commission, that there was a wye there, and there was that additional point.

A. You would be in the same position if you wyeed the engine and took the ten cars down and placed your men - you would not be able to have them all at the crossing.

Q. I quite realize that. But you said earlier that you thought Mr. Hopkins was mistaken about that, and I just wanted to recall to the Commission that it is possible to turn the engine at the wye. Mr. Hopkins mentioned that; that is correct, isn't it?

A. That is correct.

MR. SINCLAIR: The Commission might recall that we had rather a long discussion about the way the wig-wag worked there; even though

there was a wig-wag, they still had to manually flag the crossing. I remember that I tried to explain to the Commission why that was so.

BY MR. SINCLAIR:

Q. Now Mr. Nichol, maybe you can do it a little more succinctly and clearly than I did.

A. Well, the warning is a track activated circuit, and when a train passes it stops a short distance beyond. Now, we go into the shed track, which is on the east of the crossing; we are in the clear, and we make a reverse movement out, and we do not activate the signal. Therefore, it is the time bill that the crossing must be manually flagged.

Q. Before I go on to another exhibit with you, Mr. Nichol, you did conduct some switching tests at Galt?

A. I did.

MR. SINCLAIR: Mr. Hopkins gave some evidence in Volume 54, at pages 7618 to 7621, and 7635 to 7741 concerning the west end of the Galt yard. That was set out in Exhibit 270. The Commission has been there, and will remember the west end of the Galt yard; they actually saw a move performed there. I think Mr. Justice Kelloch went there at an earlier time than Mr. Chief Justice McLaurin and Mr. Justice Martineau. I was not there

when Mr. Justice Kelloch was there. In any event, there was a move made at the west end when Mr. Chief Justice McLaurin and Mr. Justice Martineau were there.

THE CHAIRMAN: Did you want to get something from this witness about it?

MR. SINCLAIR: Yes, Mr. Chairman.

BY MR. SINCLAIR:

Q. You have read the evidence of Mr. Hopkins regarding the move at the west end?

A. I have.

Q. What is your comment on that, as to how he described the way the movement would be performed?

A. As I understand it, Mr. Hopkins states the move is made so that the head trainman makes the cut, and the maximum would be 15 cars because there is a derail beyond the switch at both legs of the wye below. At the north of the wye switch he would take the movement over the main track switch leading to the west leg of the wye cross-over, and signal to the fireman to stop. He would set the switch, walk back, give the back-up signal, cross over to the engineman's side, and the movement commences. He would be going blind for nine car lengths.

Q. Before ...?

A. Before the engineman would come into view.

Q. As Mr. Hopkins described it, he was making

the cut-off in the move at the head end with one man?

A. With one man, yes.

Q. What would you say as to how many men you need?

A. He should have two men.

Q. Can you make it on the fireman's side with one man?

A. No, you can't make it on the fireman's side, not without going nine cars blind.

Q. Did you make the move to the west end of that yard with the signals relayed directly to the engineman throughout the move?

A. I did.

Q. And was there or was there not any difficulty in connection with it?

A. No difficulty whatsoever.

Q. In your opinion, what was the situation in regard to the placement of the ground crew as to hazard, if any?

A. No hazard.

Q. On the east end of the Galt yard you also made some tests. The Commission was down there, and as I recall it, they saw it performed with one man; when one man did it he had to get a way down the street.

A. Pardon me, but that is at the west end where the one man got down the street.

Q. At the east end, how many men are required?

A. Three men.

Q. Did you make the move there?

A. I made the moves there.

Q. And the signals were passed in what way?

A. On the engineman's side, directly to the engineman through the crew.

Q. What was the situation in regard to difficulty, if any, and hazard if any?

A. There was no hazard.

Q. What about difficulty?

A. Your men must keep in their proper positions to make the move.

Q. You also at my request prepared this memorandum on the switching test at Woodbridge. This is referred to in the evidence of Mr. Shefflin, Volume 53, pages 7550 to 7558 and 7580 to 7582. I undertook to call some evidence on this point.

EXHIBIT NO. 350: Switching test
by W.R.Nichol,
Woodbridge.

BY MR. SINCLAIR:

Q. Mr. Nichol, what is your comment about Exhibit 350?

A. I made tests at this point and found that the drop can be made all on the engineman's side, with the use of all three men.

Q. You have described ...?

A. I have described two ways to make the move.

Q. One being to use the spur and the other being

by using the main line?

A. Right.

Q. What evidence, if any have you on the way Mr. Shefflin said he made the move?

A. I have no doubt that he made the move that way, but he surely would be travelling to make the drop.

Q. What do you mean by that?

A. He would be going much faster than required, as described here; he would be given more room here - there is less chance of anything happening.

BY MR. SINCLAIR:

Q. When is there such a chance of anything happening?

A. With these two examples here --

Q. Here is Exhibit 350.

A. Oh, pardon me. Exhibit 350.

Q. You also made a test at Oakville-Fort Plant?

A. That is correct.

Q. How were the signals relayed on your test?

A. On the engineman's side.

Q. What is the situation with regard to difficulty?

A. No difficulty experienced.

Q. As to the positioning of the men, does^{it}/or does it not involve any hazard if the signals are given direct to the engineman?

A. No hazard.

Q. You have heard what Mr. Shefflin said and how he described it?

A. That is right.

Q. Have you any comment on his method of doing it? The Commission may recall, if I may help them, that Mr. Shefflin said he had drops off, made the cut, and handled it himself until the crew walked over in the yard. Have you any comment on that?

A. No, Perhaps I would have one comment, that the crew can be up there at the same time as he is at the switch.

Q. They can be?

A. That is right.

Q. Can you make the move as Mr. Shefflin described

it? I think he had hold of twenty-seven cars. Is it possible or not to move twenty-seven cars back with only one man?

A. No, it is not possible to move twenty-seven cars back with only one man.

Q. Why?

A. The man goes out of view of the engineman and the fireman for seven car lengths past the switch. You are almost in the No.1 track.

Q. So in order to make the move how many men are required?

A. Three men - three ground men.

Q. You also, Mr. Nichol, made some switching tests at Medonte?

A. I did.

Q. How were the signals relayed at that place when you made that test?

A. Correctly to the engineman.

Q. At both ends of the yard?

A. At both ends of the yard.

Q. And when you made these tests and the signals were relayed to the engineman what was the situation with regard to difficulty?

A. There was no difficulty whatsoever.

Q. What about the situation as to whether or not the trainman when making the movement giving signals direct to the engineman -- what was the situation as to their position from a hazard standpoint?

A. There was no hazard.

Q. Now, when Mr. Smith was on the stand I showed him that bulletin that I put in --

THE CHAIRMAN: No. 331, is that the one?

MR. SINCLAIR: No sir, I think it is 290 or 297. It is 273.

BY MR. SINCLAIR:

Q. I show you Exhibit 273 which I produced I think in the cross-examination of Hopkins. Have you seen that bulletin?

A. Yes, I have seen that on the bulletin boards and bulletin books at Windsor Yard.

Q. Yes, and on your territory is there any instruction out--but before I come to that, as soon as that bulletin went into effect on June 7, 1957, that is, Exhibit 273, have you or have you not received any complaints or requests from the crews to be relieved from carrying out this bulletin?

A. I have not.

Q. Has there been any request to make any changes in practice as the result of this bulletin?

A. No, there has not.

Q. Now with regard to Exhibit 331 which was filed by Mr. Smith yesterday, will you look at this please. Have you seen this type of bulletin on your territory?

A. Yes, I have, in the conductor's books at Windsor Yard and also on the engineman's books file.

Q. And on your travels over the division have you

had any requests from the crews in any respect as a result of that bulletin?

A. I have heard no comment whatsoever.

Q. From your observations is that road switching bulletin --

A. From my observation, yes.

Q. You have seen it. What I am asking you, witness, and I had not finished the question, was whether from your observation over the route the men have been carrying out this bulletin or not.

A. From my observation, yes, they have been carrying it out.

MR. SINCLAIR: That is all.

BY MR. LEWIS:

Q. I shall not keep you very long, Mr. Nichol. First, with regard to Exhibit 348, your switching test at Orr's Lake, as to your first alternative I am not sure I understand this and I just want to make certain. You say you are making a forward move of twenty-two cars over on the main track. The head trainman rides the engine on the right side to a point about ten lengths-- and so on.

A. That is right.

Q. Rides the engine in the cab?

A. That is right. He may be on the side ladder if it is a diesel.

Q. Where was he when you made this test?

A. In the doorway of the engine.

- Q. Was this a diesel?
- A. It was a steam engine.
- Q. About this situation at the west end of Galt yard. You said the engineer would be going blind for nine car lengths?
- A. That is right.
- Q. If one man did it?
- A. That is right, if one man did it.
- Q. Is that because of curvature?
- A. That is because of curvature.
- Q. And the curvature is such that he will be going blind for that length of time whether the ground crew was on one side or the other of him?
- A. That is right.
- Q. How can that be? I just cannot understand it.
- A. Well, your wye track makes a turnout and you are also on the straight where you would not be able to see beyond the curve at the west end of Galt. You will remember that tests were made there, and you could not handle any more than six cars before the engineman came into view.
- Q. I think I played hookey that day -- I am not quite sure, but I think I did.

I show you Exhibit 270. Just show me why, in order that I may understand, why you would be out of sight, or, rather, why the engineer would be out of sight of this man after nine car lengths on either side. You are pointing to the west edge of Exhibit 270.

- A. To the west edge of Exhibit 270. The engine and fifteen cars have gone west.
- Q. West of the switch?
- A. At point "A" Mr. Hopkins states in his evidence that he gives back-up signals here on the fireman's side.
- Q. He stands at this point "A"?
- A. On the fireman's side, and crosses over--
- Q. Crosses over north of the west leg of the wye?
- A. That is right.
- Q. And then gives the signal to the engineman?
- A. No.
- Q. He had given the signal to the engineman when he was south of the C.P.R. main line?
- A. That is right.
- Q. On the fireman's side, and then he walks over and rides on the other side?
- A. That is right.
- Q. And you are saying -- what are you saying about these nine car lengths?
- A. After nine car lengths have passed over this switch--
- Q. Mark "A"?
- A. Yes, the engineman comes into view of the man on the point.
- Q. That is when the man goes from one side to the other?
- A. Yes.
- Q. And after nine car lengths the engineman would be pushing blind because he would be pushing

the cars at that stage?

A. Yes, backing.

Q. And is there anything that requires, once he has got the proceed signal, that he must have one of the ground crew in sight?

A. I would say he would have to.

Q. Why?

A. At that position, if you are going to keep one of the men down, you have a public road crossing at Bond Street.

Q. Is that east of Water Street?

A. There is Bond Street and Water Street, but there are three streets.

Q. Then on Exhibit 270, how many cars between point "A" and when the west leg of the wye reaches Bond Street from Water Street -- how many car lengths?

A I beg your pardon.

Q Between Water Street and Bond Street
on that west leg of the Wye
how many car lengths would there be.
Do you know?

A I couldn't give you the exact number

Q Would it be more or would it be fewer
than nine?

A I do not know -- oh, it would be more
than nine.

Q So that by the time you approach Bond
Street this man now riding on the engine-
man's side would be in the engineman's
view. Is that right?

A Yes. He would.

THE CHAIRMAN: I thought there was
a rule to the effect that if the signal
disappears from view the engineman must stop.

MR. LEWIS: I was not sure that that
applied in this case. That is the reason why
I asked Mr. Nichol.

BY MR. LEWIS:

Q If you get a signal to go up the leg
of the Wye, or any other track, is the
rule under 7 (a) that you see
the signal all the time you are pulling
or picking up in the yard?

A In pushing that is. They have a signal
all the time in the yard?

Q Yes.

A Under certain exceptions, no.

Q What are they?

A Where there are no cars or where it is adequately protected by wig-wags or by some other means.

Q The chairman has in mind, Mr. Nichol, I think rule 7 (a) in exhibit 27:

"Signals must be given from a point where they can be plainly seen and in such a manner that they cannot be misunderstood. If there is doubt as to the meaning of a signal or for whom it is intended, **it** must be regarded as a stop signal. If signals disappear from view the movement must be stopped immediately, unless otherwise controlled."

Do you think this rule 7 (a) would apply in this particular case?

A Yes.

Q So the ground man would have to be in the view of the engineer all the time in order to observe rule 7 (a)?

A That is right.

Q In your comment about not having to be on the point car, when you said there are certain exceptions, you were not thinking of the signal being in the sight of the engine crew, you were thinking of cars

being pushed by an engineman, and a member of the crew must be on that leading car and in a position from which signals necessary to the movement can be properly given.

That is in the first paragraph of rule 103. That is what you had in mind?

A Yes.

Q About the Oakville point there was something I could not understand. You said something about switching and that the others got up there at the same time as the head-end trainman at the switch.

A They cross over from the rear of the train, across the bridge and at No. 1 switch, and walked up and were at the lead switch.

Q You do not mean to say they got there the same time as the head-end man?

A They were there at the same time.

Q How far does the head-end man have to walk to get there on time?

A He doesn't have to walk any distance.

Q Exactly?

A He has a long forward movement to make. He pulls up his train and stops short. By that time he has pulled his train almost opposite.

Q He has already done something?

A Yes.

Q And while he is doing that they walk up and get to the No. 1 switch at the same time he does?

A Yes.

MR. LEWIS: That is all.

- - - MR. SINCLAIR: I will recall Mr. McClean. Mr. McClean, of course, is already sworn. He gave evidence earlier in these proceedings. Mr. McClean, consider yourself in giving evidence as already being under oath.

J. K. McCLEAN, recalled

BY HON. MR. McLAURIN:

Q Are you from Smiths Falls?

A No. Ottawa.

BY MR. SINCLAIR:

Q I am recalling Mr. McClean in rebuttal in order to deal with a couple of matters. In volume 39 at pages 543⁴ and following, fireman Sloan gave some evidence about being on train No. 9 between Ottawa and Chalk River before Christmas 1956. He stated that a hot engine developed in a two-unit consist, it was not operating properly, nothing could be done to correct the situation because of a short circuit in the wiring and the vibration occurred like when the engine was travelling at high

speed it shut off the fan. Sloan stated he isolated the difficulty and it made its running time. What is your comment on that?

A I checked the records of the trips made by Sloan during that time. I checked back from July 1 to December 31 1956 and I find that he has only made one trip on No. 9 to Chalk River on which train No. 9 had two A units, and that was on July 2nd. The incident which Mr. Sloan reports is a car body and road switcher.

Q And you say the only time he travelled --

A The only time he travelled on No. 9 between Ottawa and Chalk River was on July 2, 1956 and there were two car body type units or in other words "A" unit. I also checked on No. 7 and I find that from July 1 1956 to April 30 1957 he had made one trip on train No. 7 between Ottawa and Chalk River and that was on September 14. This train had two car body type units, "A" and "B" units. On each one of these trips, both on No. 7 and No. 9, there was nothing booked about hot engines or any defects in the engines or loss of running time.

Q Booked on what?

A Against the engine that was riding on the A unit No. 9 on July 2.

THE CHAIRMAN: You mean the MP-74?

THE WITNESS: There was nothing on the MP-74.

BY MR. SINCLAIR:

Q Further on in the same volume 391 at pages 5461 through 5465 there was some cross-examination by myself of Mr. Sloan and a number of questions asked by the Chairman of Mr. Sloan. Mr. Sloan stated that he made ten or more trips on the Canadian and that it was common to experience trouble with one or more unit on that train and then he was asked the following question at page 5465:

"When you had these experiences with the engine failing to make transition or a hot engine were they always entered on the MP-74?

A. Yes."

What is your comment on that evidence? You have read all that evidence?

A Yes. I checked all the trips he made during that period and find he has made six trips on the Canadian one of which was on July 3 on train No. 2, September 17 train No. 2, September 18 train No. 1, December 31 train No. 2, December 26 train No. 2 and December 31 train No. 2. I have examined the MP-74's for any defects on these engines and could find nothing that could cause failure of the engine. Those are some of the engines on

which I could locate the MP-74's and on those units I checked the shop inspection certificate in which it would be noted if there was any serious defect of an engine either in transit or of any other serious nature and I find there was nothing of that kind booked on any of the engines on those particular dates -- the engines which were on the trains on those dates.

Q How many of the MP-74's did you actually get that showed Sloan as the fireman?

A Eight out of twelve.

Q On those eight what did the MP-74's show?

A Nothing booked except cab windows, the insulation of cab windows and cab doors. There was nothing to show a transition or anything.

Q No hot engines?

A No.

Q Or any of the matters referred to by him in this transcript?

A No.

Q In volume 38 pages 5393 to 5397 certain evidence was given by fireman St. Germain of Ottawa. He said that on May 1 1957 while making up the Prescott way freight in Ottawa West yard the road switcher 8535 pulled out of track No. 10 with about ten cars. He said that engineman Gale was

looking back and taking signals from the train crew when he saw a man step out right in front of the engine from right to left. St. Germain said he called to the engineman to stop and the movement came to a stop when the man was in the centre of the track walking in the same direction as the movement. To be a little more accurate he said:

"As we were pulling ahead I was looking out ahead and there was this man stepped out in front of the engine -- he did not step out, he backed out right in front of the engine. I shouted for my mate to stop. I said 'hold it', there is a man on the track.' He stopped. We were not going very fast, and then he said to me -- meaning the engineman said to him -- 'well, I did not see it.' I said, 'I know you did not.' It was too close to the engine."

He also said when he stopped they were about 20 feet from the man. What would be your comment on that incident as referred to by St. Germain?

A I was on that engine when Fireman St. Germaine called that there was a man on the train. I was back of the throttle stand facing the engineer when he mentioned that. I moved over to the fireman's side and looked out and I saw a man, which I know now was Mr. Smith, who was crossing the track. He was about 15 to 20 feet in front of the locomotive. We were going about two or three miles an hour.

Q You were doing about two or three miles an hour?

A Two or three miles an hour on the track; that is a rough estimate; the approximate speed. He was crossing over to the south side of the track.

Q When you looked out where was he?

A He was just crossing the south rail. He would be clear before we got to him. He was crossing the south rail and evidently he was going to watch the movement of another train which was ready to pull out at that time. Was there any comment between you and St. Germaine?

A No, there was no comment made at all. I didn't pay any attention; I didn't think there was an incident to it.

Q Did you later see Mr. Smith, the man on the track?

A With Mr. Harris; I was with Mr. Harris when Mr. Smith was questioned as to his knowledge of that train and he was very much surprised. He knew of the movement but he was very much surprised that this matter was brought up at all. He was aware the train was moving and he confirmed what I said, that he was moving across to the south side of the track to watch a movement of another train which was coming out at the same time.

Q Did he say anything to you as to whether he was or was not in a dangerous position?

A No, he did not.

Q Did you consider him to be when you saw him?

A No, not at the distance he was from the engine.

MR. SINCLAIR: There is just one more item, but it is not worth wasting time on.

BY MR. LEWIS:

Q When you say that this engine was going two or three miles an hour that was an estimate on your part?

A It was an estimate on my part, yes.

Q When was it made, at the time you were on the engine or since?

A That was at the time I was on the engine.

Q Did you have occasion to make an estimate

of the speed at that time? Did you have any reason to do that?

A That is the rule, the speed on that particular movement coming towards the yard office. You are never going very fast -- two or three miles an hour. That is a switching movement.

Q You do not really remember exactly what the speed was on that particular date? What you are saying to this Commission is that as a rule the speed is two or three miles an hour, not very fast?

A That would be, yes, the estimated speed.

Q It might be five miles an hour?

A No, not five miles an hour.

Q Not beyond three?

A I doubt very much it would be beyond three miles an hour.

--

--

Q You know much more about these things than I do, Mr. McClean, but are you suggesting that if a man is 15 feet away from an engine, even if you are going three miles an hour, that is not a dangerous position for him to be in?

A No, I would not consider it too dangerous with that speed of an engine. There is the noise of the engine; you are not going to be totally unaware. It does not sneak up behind you in soft shoes or anything like that. There is a certain amount of noise to the engine.

Q Yes, I have ridden enough of them by now to know that there is some noise, Mr. McClean, but are you suggesting that the engine could stop within 15 feet?

A Well, I am not sure if it would come to a dead stop. It would certainly have slowed down to a great extent in 15 feet at that speed.

Q What if it hit you even slowed down in 15 feet, would you not feel it if you were in the middle of the track or on the rails?

A I imagine you would be cleared from the track if it had hit you.

Q Suppose you had not cleared it?

A Yes, you would feel it.

Q Certainly you are not suggesting that if St. Germaine saw that man in the middle of the track and 15 feet away that that is a safe position for the man to be in -- you would not suggest that?

A No, in my opinion in that particular movement 15 feet would be ample clearance.

Q Fifteen feet from the engine?

A Yes, the man has been doing this for apparently a number of years. He is a yard master and he knows the yard and you are going to assume he is going to be in a safer position than anybody who is not quite accustomed to that train movement.

Q Fifteen feet would be about the length of this table I am standing in front of, would it?

A It would be more than that. That is not 15 feet.

Q It would not be that far off, you think?

A Yes.

Q It may be, I am not much good at measuring.

A Yes, it is not 10 feet. You would have to add another 5 feet.

Q You would have to add another 5 feet?

A Yes.

Q Well, let us take it from the end of this table to that rail; would that be about right?

A That would be approximately 15 feet more or less.

Q And if you are at the rail and the engine is here going at three miles an hour -- I meant not at the rail on the track but the rail in this court room and the engine is here to my left at the edge of the box you are not suggesting to the Commission that this distance is safe enough for a man to be on the track?

A In this particular instance that man was walking ahead of the engine away from it and with brake application I do not think the engine would have ever caught him up. His speed was beating that of the engine and if there had been an emergency brake application, if the engineer who performed it was wise enough to make an emergency application but he had given a service application.

Q What did happen he gave a service application?

A Yes, and slowed it down and Mr. Smith

proceeded on to the south side of the track and he was watching the other train pull out, I guess. I presume that is what he was over there for. In fact he said that was what he was going over there for.

Q Pardon?

A He had told me after that is what he was going over there for, to watch the other movement.

Q He told you and Mr. Harris last Monday?

A No, right after the previous court hearing.

Q After the middle of June when we had the previous hearing?

A About two days after the statement was made in court by St. Germaine.

Q You say when you looked out the window this man was on the south rail of the track, is that it?

A He was just about to cross from the centre of the track over to the south rail, that is, into clear. He stood clear of the track while I was there watching him and I was not there for any considerable length of time.

Q When you came over to St. Germaine's side you saw him clearing the south track from the centre of the south rail.

Would it be reasonable to say when St. Germaine saw him he was just coming in to the track, crossing the north rail?

A It is possible. There would have been three or four seconds before I moved over to the fireman's side.

Q Did you hear whether the engineer said anything when he was told to stop?

A No, he stopped.

Q Pardon?

A He stopped when the fireman had told him there was a man on the track and the engineman applied his brake and brought the train to a stop.

Q Made a service application?

A Yes, and brought the train to a stop.

Q How far were you from this man when the train stopped?

A We were still about 15 feet.

Q The same distance that you were when you first looked out?

A Yes, that is about it.

Q Was the man going --

A He had been crossing diagonally. By the time we had stopped he was in the clear. He had moved over on the south side of the train.

Q Had you known this Mr. St. Germaine before he gave evidence here?

A Oh, I think I have made possibly four trips with him. I do not know him personally at all.

Q Had you known Mr. Sloan?

A Mr. Sloan I have made five or six trips with on an engine. I don't know him personally, I just know him by name.

Q He was the man who said he was being frank with my learned friend but was not trying to be.

MR. SINCLAIR: Sloan, yes. I don't know that he quite said that. That is the man.

BY MR. LEWIS: .

Q Oh yes, I was curious about -- you said that you looked up from July 2 to December 31, 1956, on all the No.9 trains and found that Mr. Sloan had been on only one from Ottawa to Chalk River?

A Yes, and that was July 2.

Q To December 31?

A Yes, to December 31.

Q Was he on this No. 9 between other points or could he be?

A He possibly could have been. I have checked also up until April 1957 and cannot find him anywhere. I have also checked the trip tickets.

Q I understood you checked to April 30,

1957, with regard to the No. 7 train?

A On the No. 7 train too. I checked both trains. When you are checking one you can make the same check on other trains when you are checking through the record.

Q Mr. McClean, that is what I was curious about; you informed the Commission in your earlier evidence that with regard to No. 9 you made a check between July 2 and December 31, 1956, and in regard to No. 7 it was from July 2, 1956, to April 30, 1957?

A Yes, and I also checked No. 9 until April 1957 to see if there was a possibility he had made a trip.

Q Why didn't you say so before? If you had done it for the same dates why didn't you state it before?

A Well, in the evidence it was around Christmas, around that area, and in case there was any benefit of doubt I checked further forward in case you asked me that question so I could make an answer to it.

Q You were prepared to give an answer in case I asked you the question?

A If there was any benefit to him, in favour of Mr. Sloan there.

Q You looked it up to be prepared to answer the question I have just asked you?

A For the benefit of Mr. Sloan, in case he was mistaken on the date. I had looked quite a few months in each way back up until April 1957 from July 1956 in case there was a possibility he had made a mistake in date so I could look up the engine and see what record they had of it to have a full explanation of it.

Q What I really want to know is when you looked up that record of No. 9 until 1957 or was it only No. 7 into 1957?

A I looked up both No. 9 and No. 7.

Q Until April 30, 1957?

A Both April 30, 1957.

Q And back to July 2, 1956?

A That is right, yes.

Q And you couldn't find anything about a hot engine on the MP-74's?

A Not on the trips that he was covering. The only place he showed was on the dates I mentioned and there was nothing booked at that time on hot engines. They were different types of engines to the ones he described in the evidence.

Q If you were looking for the MP-74's you would see all of them used on those trains during those dates?

A No, just for those dates, I just looked for those dates.

Q When you say "those dates" what do you mean?

A July 2 and September -- what is the date of No. 7?

Q You mean you just looked at the date on which you found he had been on either No. 9 or No. 7?

A That is correct.

Q And you didn't look at the MP's for any other date?

A No, I didn't look at the MP's for any other date.

Q So you are not able to tell the Commission whether there were any reports on the MP's about hot engines or the like with regard to the same engines on the other dates?

A Well, unless they specified the date. I could look it up and find out when it had a hot engine but it was not a trip which Mr. Sloan had made on the dates he had shown in his evidence.

Q All I asked you was you therefore cannot because you didn't look and you cannot tell us whether there were any entries of hot engines for other dates?

A On which Mr. Sloan was not riding?

Q On other dates than the two that you mention?

A No, I didn't look at that.

Q Then, about these four instances whether there were any MP-74's when you looked up the record in the shop, am I right that there were twelve altogether and eight of them MP--74's for and four you looked up shop records for?

A Yes, that is right.

Q I didn't make a note, but that was my memory?

A Yes, that is right.

Q You say those shop records did not show anything of a serious nature?

A That is right.

Q What do you mean by "serious"?

A If there had been a failure on the engine especially when it had failed for transition it would have been marked on the shop inspection part, the shop transition report.

Q Suppose there had been a hot engine and the necessary action was taken en route and there was no further trouble, that would not have been in the shop records, would it?

A No, it would not if it had cleared itself.

Q And if they had a little difficulty with transition and that was overcome --

A That does not overcome itself.

Q Is there anything they can do en route?

A No, they have to interfere with the settings of transition and then it must be booked and examined in the shop.

Q Mr. McClean, correct me if I am wrong, but my memory is if you have difficulty with the transition you try action by shutting off the switch and turning it on again and it may make. Do you not know of that being done?

A Yes, it is possible, but it is very seldom it ever happens that way. It is ~~a~~ great odd that **there is** where your trouble would be in transition.

Q But that is done **in** practice by men, is it not?

A It may be done in practice but it is not a cure-all.

Q But it is done, is it not?

A It is done, yes. They attempt to do it but it is not giving them any results. It is very, very rarely that you would get a case where that would correct a situation of transition. Transition is actually controlled by voltage.

Q This particular action of turning the switch off and putting it on again you say is the very rare occasion?

A It is a very rare occasion that that will correct it.

Q And if they did that with regard to a transition difficulty that, of course, would not be on the form, on the shop form?

A No, that would not be on the shop form I don't imagine unless they marked it somewhere. But transition would. They would know because if there was transition difficulty the engineman will report it.

Q When you looked at the MP-74's was any one of them made out by Mr. Sloan?

A The handwriting was similar to his signature in several cases. He had made entries on the form. I couldn't be sure if it was his handwriting, I am not a handwriting expert, but it looked very similar to that of his signature.

Q Are you very good at spelling, Mr. McClean?

A Well, the spelling was all right.

Q Are you good at spelling normally?

A Yes, normal.

Q These entries you thought Mr. Sloan made, were all the entries correct, do you remember?

A I didn't pay much attention, I was not criticizing the spelling.

Q Normally those forms are made out by the engineer, are they not?

A As a rule, although firemen make them out too.

Q Was the engineer's signature on the form?

A The engineer's signature was on the form too, presumably.

Q That is normal, isn't it?

A That is normal.

BY MR. SINCLAIR:

Q Just one question. If there is booked on the MP-74 a transition difficulty and that went into the shop would the shop note it on the shop inspection form?

A It would be noted on the inspection form what the readings were, what settings were found on the engine on arrival there and what changes were made.

Q If any work was booked on the MP-74 would the shop carry it over to the shop inspection report?

A It goes to the shop inspection sheet too.

Q Invariably?

A Yes, it is always marked on or the MP-74 is attached right now, it is attached to the sheets when they are recorded on the inspection sheets, any defects.

Q Any case in which there was an entry on the MP-74 would be carried forward onto the shop inspection form?

A It would be, yes.

THE CHAIRMAN: Thank you.

MR. SINCLAIR: If I could just have

a moment.

---Recess.

ARCHIBALD W. HARRIS, sworn, examined

BY MR. SINCLAIR:

Q Mr. Harris, I am going to read the service record **with** the company that you have given me and if there are any errors or additions you can tell me.

You joined the company in 1923 as a section man and you transferred after a short **period** of some months to the stores department where you stayed for a few months and then you became a call boy and in 1926 you became a yard labourer, in 1927 you went back to the stores department, later in the year you went out as a trainman on the Farnham Division, Canadian Pacific. Work fell off and in the depression you did such jobs as labourer, stores man, catching the odd run as a trainman when you could do so including trainman work in Western Canada. You moved about the system catching on where your seniority would allow you to catch on.

You also in that period worked for the railroad in the signals department. In 1939 you ran as a trainman on the Portage Division and you were promoted

to a conductor and came back to Farnham in 1941. In 1944 you were relief yardmaster at Megantic, then at Sherbrooke and then at Farnham and in October 1945 you were promoted to Assistant Superintendent, Laurentian Division, and then Assistant Superintendent the next year at Chapleau on the Schreiber Division and then you worked the other end of the Schreiber Division with your headquarters at Schreiber as Assistant Superintendent.

Then in 1951 you were moved to Three Rivers as Assistant Superintendent in that territory, you stayed there until 1955 in February when you were promoted to be Superintendent of the Bruce Division with headquarters in Toronto and on August 1, 1956, you were promoted to Superintendent of the Smiths Falls Division with headquarters at Smiths Falls?

A That is correct.

Q Smiths Falls Division includes Ottawa and Ottawa to Montreal on the south side of the river?

A Yes, sir.

Q In charge of passenger trains between Ottawa and Montreal, Mr. Harris?

A On the M & O Subdivision.

Q Mr. Harris, I want to refer you to certain parts of the transcript that

I know you have read and I have summarized them and they may not have everything you have read in them, but if it does not set out the facts completely or you want to add to it you may do so.

The first one of these is in relation to an accident referred to by Fireman Post of Ottawa and it is at Volume 38, pages 5366 and 5368, and Mr. Post said that around 5.30 p.m. in February 1957 engine 3433, that is a yard engine, was switching at McKay Smelters with **Engineman** Alex Hamel, a car was being spotted with signals being given directly to the engineer. The door at which it was to be spotted was on the fireman's side. Yardman Dupuis walked around the car to the fireman's side to see if the car was spotted at the door and then, said Mr. Post, he called to Yardman Larkin who was on the engineer's side to move ahead again. Then, as the engine began to move Dupuis lost his footing due to icy conditions and slipped in under the car. Fireman Post yelled to the engineer who stopped the train. What are your comments on that?

A I investigated that accident. I took statements from Yardman Dupuis and

Yardman Larkin and Engineman Hamel in that connection.

MR. SINCLAIR: I would like to file copies of those statements, beginning with Exhibit 351. Exhibit 351 would be the statement dated May 30, 1957, a statement taken by A.W. Harris and the statement is signed by J.A. Hamel.

EXHIBIT 351 -- Statement by
J.A. Hamel to
A.W. Harris,
dated May 30,
1957.

The next one, Exhibit 352 is the statement that shows that it was taken by Mr. Harris dated Ottawa West, May 2, and signed by H. Dupuis.

EXHIBIT 352 -- Statement dated
May 22, 1957,
by H. Dupuis to
A.W. Harris.

Will you mark your copy of that as Exhibit 352? The third one or Exhibit 353 is a statement taken by Mr. Harris of Yardman Larkin dated May 28, 1957, Ottawa.

EXHIBIT 353 -- Statement dated
May 28, 1957,
by Yardman Larkin
to A.W. Harris.

BY MR. SINCLAIR:

Q Now, Mr. Harris, I think the quickest way to handle this is for you to refer to these statements and if there are

any parts of them you wish to draw to the attention of the Commission do so?

A Yes, I would like to draw your attention to a portion of Mr. Hamel's statement, Exhibit 351.

Q Just read it, please?

A The second question:

"At some time during the month of February do you recall an incident wherein Yardman Dupuis slipped and fell while walking on the Fireman's side while switching McKay Smelter's siding at about 5.30 p.m.?"

A. Yes. We moved into McKay Smelter's Siding with 2 cars on the rear of our engine, Yardman E.E. Larkin and Yardman H.S. Dupuis were on my side giving lamp signals. I saw Yardman Dupuis walk around to the opposite side of the movement I presume for the purpose of checking obstructions. While moving at a very slow speed because I was watching Yardman Larkin for signals. Suddenly I was given a stop signal and I stopped the movement accordingly. At the time I received the stop signal from Larkin I also heard Fireman Post call out 'Stop.'

"Sometime after I heard Dupuis say to the effect 'That was a good stop' and I then learned that Dupuis had slipped and fell on the ice."

Q What about any part of Exhibit 352, that is Dupuis' statement, that would be the man who fell?

A In the first answer starting in the fifth line --

Q Well, I don't know if our copy is quite the same. Just start reading and we will catch it.

A (Reads):

"Yardman Larkin and I were on the Engineman's side and giving signals directly to the Engineman. I mentioned to Yardman Larkin that I would go around to the opposite side to make certain that there was no scrap iron or other obstacles near the track. This action being the result of a derailment and interference on previous occasions. When I reached the opposite side and could see no interference the movement began into the siding at crawling speed and as I was walking alongside the car at the end away from the engine I slipped on the icy surface alongside of the track. As

"the result of the slipping I fell into a sitting position when I placed my left hand against the journal box cover and in this manner kept myself away from the car and from further injury. When I fell I shouted to my mate on the opposite side of the car 'Stop a minute, Earl'. The movement was brought to a stop by Yardman Larkin within a distance of about three feet. I climbed to my feet and the switching movement continued.

Q. You are absolutely certain that you did not slip and fall under the car as was claimed?

A. No. If I ever fell under a moving car I assure you I would never forget it."

There is a portion in Mr. Larkin's statement too.

Q That is Exhibit 353?

A Yes:

"Q. Do you recall at sometime during the month of February while switching the McKay Smelter's siding at about 5.30 p.m., your mate, Yardman Henry S. Dupuis slipped and fell in under a moving car?

A. At no time to my knowledge

"did Yardman Dupuis fall in under a moving car. However, I do recall an incident taking place as follows: during switching operations at the McKay Smelter's at about 5.30 p.m. on one day in February the exact date of which I do not remember, Yardman Dupuis and I were giving signals on the engineman's side during a move into the Smelter's track. Yardman Dupuis remarked to me that he would go around to the other side and check on clearance as it was not unusual for heavy material to be left foul of the track. Due to the curvature and in order to give signals to the Engineman it was necessary for me to stand back some distance from the side of the cars. I was also standing at such an angle that I could see under the car and could see the legs of Yardman Dupuis and also his lantern as he walked along the opposite or Fireman's side of the cars. The movement was proceeding at a crawl and I was actually watching Yardman Dupuis when I saw him slip and fall to a sitting position. Yardman Dupuis shouted 'Stop a minute, Earl,'

"but before the sentence was completed I had given the stop signal to the Engineman. The movement was brought to a stop in a distance of about two or three feet. Yardman Dupuis got to his feet immediately as we proceeded with the movement."

Q Is there anything more that you wish to say concerning this incident and the investigation you made of it?

A Well, sir, when I started the investigation with Yardman Dupuis he told me, "Mr. Harris, I think you have the wrong man because this certainly never happened to me. I was never in such a hazardous position in my life as is claimed by Mr. Post."

Q That is, that he was under a moving car, I take it?

A That is right.

Q That is a hazardous position, isn't it?

A You bet it is.

Q Now, there is found another incident in Volume 38, pages 5370 and 5371, which was referred to by Mr. Post during his testimony and this had to do with train No. 1. Mr. Post was the fireman on train No. 1, he said, with the A unit in lead, car body type, 1400 class, and approaching the crossing just west of

Rigaud with Engineer Harry Barber. The engineer was sounding the whistle for the crossing and Post noticed a young girl approaching the crossing who apparently did not hear or was not paying any attention at all to the whistle signal. From the evidence it would appear that Post said the girl was approaching the engineman's side and Post said:

"I did not have time to call to Mr. Barber and I knew that the application of the brakes would not do any good because we were travelling then I would say 65 to 70 miles an hour.

So I jumped from my seat, grabbed the whistle cord out of Barber's hand, and immediately gave some short blasts on the whistle. Then, as the little girl was about to step on the track she lifted her head and saw us coming and stepped back and we went over the crossing."

What is your comment on that incident, Mr. Harris?

A I investigated that incident and I obtained a statement from Engineman H. Barber.

MR. SINCLAIR: I would like to file statement taken by Mr. Harris dated Ottawa West, October 1, 1957, signed by H. Barber as

Exhibit 354.

EXHIBIT 354 -- Statement of
H. Barber made
to A.W. Harris,
dated Ottawa West,
October 1, 1957.

BY MR. SINCLAIR:

Q Very well now, looking at this statement, Exhibit 354, is there any part of it in particular that you wish to draw to the attention of the Commission?

A Yes, sir, I would like to read a portion of that statement to the Commission.

Q Very well, just go ahead please?

A (Reads):

"Q. Do you recall an incident when approaching a crossing wherein Fireman K. Post grabbed the whistle cord out of your hand and gave short blasts on the whistle?

A. Yes. We were approaching a crossing just west of Rigaud and at the prescribed distance I commenced to sound the whistle or horn and to ring the bell with my left hand. As we drew closer I saw a girl about 16 years of age walking westward on the shoulder of the track on my side. I continued to sound the whistle and with my right hand I made a brake application, since we were running at about 65 to 70 m.p.h.

"While I was still in the act of sounding the whistle or horn, Fireman Post jumped up from his seat and grabbed the cord out of my hand and gave several short blasts. The girl very nonchalantly continued to walk on the shoulder until she reached the highway at which point she turned off to the right in a very casual and unexcited manner."

In my opinion this girl was fully aware of our presence and heard the whistle and bell from the beginning and realized she had just a short distance to go before reaching the crossing.

Q That is in the middle of the answer to a question further down. You jumped down, is that right?

A Yes. Now, the second question further down:

"Do you think that the giving of short blasts made any difference in so far as the movement of this young girl was concerned?

A. I do not."

Q Anything further?

A No, sir.

Q Now, Mr. Harris, there was at Volume 38, pages 5413 and 5416, an incident referred to by Fireman Blackburn of Ottawa and he

said on March 7 on those pages engine 8401 that Engineer Gale was picking cars into the river yard at Ottawa. After having picked two or three cars down the west main line and the lead he said the engine stopped and just as it did a section man knelt down right in front of the engine. He was still upon his knees when the engineer received the signal to go ahead from the yardman back by the scale house where the cars were being dropped. Blackburn says:

"The engineer was looking behind and I was looking out watching this section man ... and as soon as he had the go ahead signal, as soon as I heard him open the throttle and start to move I let a holler out of me and said 'Whoa'. I yelled 'Whoa' because the section man was right down in front of the footboard on the engine. He was no more than a foot or two feet ... away from the footboard."

That is on page 5416 where I am quoting lines 1 to 7. I think I have a further note that the engine was moving cab first, the diesel engine was moving cab first at the time of this incident. What is your comment on that?

A I obtained a statement from Engineer
R. G. Gale in this connection.

MR. SINCLAIR: I would like to file
as Exhibit 355 statement by Mr. Gale given to
Mr. Harris dated May 20, 1957.

EXHIBIT 355 -- Statement of
R.G. Gale to
A.W. Harris dated
May 20, 1957.

BY MR. SINCLAIR:

Q Is there any part of this statement you
would like to call to the attention of
the Commission?

A Yes, I would like to read the lower
portion commencing with the first question:

"Q. Do you recall an incident in
Ottawa West Yard on March 7 when
Fireman L. W. Blackburn shouted 'Whoa'
and had you stop a movement account a
section man in front of the diesel?

A. No.

Q. Did Fireman Blackburn advise
you at any time afterwards that a
section man was on his knees on the
track on his side a few feet in front
of the footboards and that he saved
the section man's life by having the
movement stopped?

A. No. The first time I heard
of the incident was when I read it
in the Ottawa paper and I didn't

"know I was the Engineman until I was told by you (Superintendent A.W. Harris).

Q. Don't you think that sort of strange?

A. Yes, I do.

Q. As engineman on a yard engine how do you move about a yard?

A. While on a yard engine or any other engine moving around any yard I keep a sharp and constant lookout in both directions for signals, other movements and in the winter-time I particularly watch out for section men who might be working on or near the track on which I am moving. At no time when running an engine to my knowledge did I come even close to running down one of these or any other employees."

Q Now, in your investigation did you or did you not approach the section men in the Ottawa yard?

A Yes, sir, I contacted all the section men and extra gang men who were working in the yard on that particular day and all of them emphatically deny that they were in any dangerous position. We did have a large gang changing rails in the yard at that time but these men are all working

in units and each unit has a supervisor and it is his responsibility to see that these men are safe.. If there is any danger he notifies them and all this changing of rails was all done in very close cooperation with yard movement. Every second had to count.

Q What do you mean in close cooperation with yard movement?

A Well, all these rails were changed while the yard continued to carry on its usual functions and it was just in between moves that these men were putting in additional bolts and putting in additional spikes, etc.

Q And when you say "close cooperation" how was that cooperation brought about between the yard movement and the men?

A Well, if they are going to change rail out on one particular track they will arrange with the yard while they are working on that track that they will have the yard engine working in some other section.

Q Now, another incident that was referred to by Fireman Sloan, Volume 39, pages 5436 to 5439, Fireman Sloan said on February 21, 1957, yard engine 7089 was moving from Hull East to Hull West with Engineman Monahan and Yard Foreman

James Wilkin and Yardman Sauve. Just before coming to Montcalm Street crossing which is protected by gates Yardman Sauve took a position on the front of the engine. Sloan then went on to state and I am quoting from page 5437:

"As the sun was shining in the windows the engineer did not see that the gates were not operated for some reason I don't know."

Meaning down. He went on further to state and I am quoting now from page 5438 and page 5439:

"There was a bus at the time unloading passengers at this point ... and two trucks coming from the left side at I would say normal speed ... the brakeman did not make any motion to stop the movement. I had to signal the engineer what was taking place. At this time the brakes were applied in emergency."

What have you got to say about that incident, Mr. Harris?

A I investigated this incident, Mr. Sinclair, and I obtained statements from Mr. A.Sauve, the yardman, and also from Mr. W. Monahan, the engineman in this case.

MR. SINCLAIR: I would like to file the statement of W. Monahan, engineman, dated

May 29, showing statement taken by Mr. Harris as Exhibit 356.

EXHIBIT 356 -- Statement of
W. Monahan to
A.W. Harris,
dated May 29, 1957.

MR. SINCLAIR: And then as Exhibit 357 statement taken by Mr. Harris dated Ottawa, May 29, from Yardman Sauve.

EXHIBIT 357 -- Statement of
A. Sauve to
A.W. Harris,
dated May 29, 1957.

BY MR. SINCLAIR:

Q Looking at these exhibits are there any parts of them you wish to draw to the Commission's attention?

A Yes, sir, I would like to read a portion of the statement given by Engineman W. Monahan.

Q That is Exhibit 356 -- yes?

A Down at the bottom of the page:

"Q. Do you recall the incident that might be referred to here?

A. In view of the fact that we are seldom required to stop at this crossing due to gates not lowered I feel quite sure that it was on the date in question that I was approaching Montcalm Street crossing with a heavy train at a speed of

"about two or three miles per hour with a view to taking the siding without stopping. However, when the front of my engine was two or three car lengths from the crossing I saw an automobile move over the crossing from south to north at a fairly high rate of speed, this alone was an indication without looking any further that the gates were not lowered and I shut off the power and the movement stopped in a very short distance and after stop was made the front of my engine was still a considerable distance away from the crossing. I don't think I even had to apply the brakes in this case but I am absolutely certain that I did not apply the brakes in emergency. I would like to point out also I did receive a warning from the Fireman but I had already shut the engine off before I received it. I would also point out that this was a perfectly normal movement and that at no time was the traffic in any danger or was there any reason for alarm. Due to the heavy traffic over this crossing the gateman deliberately delays the lowering of the gates as long as

"possible" and when our train is moving at very slow speed the gates are not lowered until we are quite close to the crossing. Here again, I am well acquainted with this fact and all movements to this crossing are governed accordingly.

Q. How long have you been working on this transfer?

A. Since October 1, 1954."

I would also like to read a portion from the statement given by Yardman A.Sauve, commencing with the third question:

"Q. Do you recall your movements approaching the Montcalm Street crossing on this particular date?

A. Yes. At a point about 200 yards east of Montcalm Street crossing I left the cab and moved to the front of the engine and took up position on the steps on the left or Fireman's side. We had a heavy train on this particular date and I knew it would be necessary for me to run to the switch and line same for the back track without having to stop the movement because with a heavy train and having to stop it is sometimes necessary to back down in order to lift the train. Therefore, I was on the bottom step in

"readiness to run to the switch.

The movement slowed to a speed of about two miles per hour and was moving at this rate when I noticed a bus standing on the left or south side of the crossing. When about two car lengths east of the crossing I noticed an automobile approaching the crossing at a fairly high rate of speed. It flashed through my mind that the Gateman could not lower the gates in the face of this motorist so I gave a stop signal to the Fireman from my position, the movement was stopped and the front of the diesel was still about 20 or 30 feet from the east side of the crossing. When the automobile passed over the tracks the gates were lowered and I walked to the switch and lined it for the siding behind the station and we pulled into clear.

Q. Was there anything alarming in the performance with respect to the Montcalm Street crossing on this particular date?

A. No. We know approaching this crossing that the gate Operator delays lowering the gates as much as possible due to the heavy traffic over this

"crossing and we always approached this crossing at very slow speed expecting to have to stop if the gates are not lowered."

And lower down:

"Q. Why did you take up position on the Fireman's side approaching this crossing?

A. Only out of habit and for the reason that it was a little more convenient for me to step off and run to the switch which is situated on that side.

Q. Could you have taken up position on the Engineman's side and performed your duty just as safely as on the other side?

A. Yes, except that I would be required perhaps to take two additional steps to reach the switch.

Q. Are you absolutely certain that when you noticed the gates were not lowered as required you gave a stop signal to the Fireman at a safe distance from the crossing?

A. Yes."

Q Is there anything further that developed in your investigations, Mr. Harris, that you would like to refer to?

A Yes, sir, Yardman Sauve and Engineman

W. Monahan were genuinely astonished that they were a party to a near accident at this crossing.

Q Now, at Volume 39, pages 5440 to 5444, Fireman Sloan spoke of another incident and my note on it is: on February 23, 1957, engine 7028, that is a yard diesel, with Engineer Monahan was going over the crossover leading to the Aylmer Road to go along the track leading to the shed to place shed cars. The front-end brakeman lined the switch for the forward move and stayed there. The engineer was looking backwards for signals when to stop in order to back over to the shed tracks and then Fireman Sloan said, and I am quoting this from page 5442, line 26:

"Well, while pulling forward there was a boy on the side of the track with skis and as we got close to him he decided to cross over in front of the engine which was moving slowly forward as we were not far enough for the switch behind yet. The engineer was looking forward for signal and I informed him of this boy crossing who had skis on his feet and he fell in front of the engine."

This boy at this time was on railway property, he was not at the crossing. That

has been brought out in the evidence. Sloan also said that the engineer applied the brakes and the engine stopped about half a box car from where the boy was lying and that no member of the crew was in front of the engine. What about that incident, Mr. Harris?

A Yes, sir, I investigated that incident and I obtained a statement from Engineman W. Monahan.

THE CHAIRMAN: Exhibit 358 is what?

MR. SINCLAIR: Exhibit 358 is a statement of Engineman Monahan of May 29, 1957, taken by Mr. Harris.

EXHIBIT 358 -- Statement by
Engineman W.
Monahan to
A.W. Harris dated
May 29, 1957.

BY MR. SINCLAIR:

Q Go ahead, Mr. Harris, and read what parts you wish to draw to the particular attention of the Commission?

A Commencing with the third question:

"Q. If you were to move from the front siding to the long spur via the crossover with engine first and headed west hauling five cars intending to switch the shed track from the west end, what would be the normal way in which you would handle such a movement?

"A. Normally I would wait until both switches of the crossover were lined and I received a signal from a Yardman and I would proceed accordingly provided there was no obstruction on the track. I would move at yard speed along the long spur track watching alternatively in both directions until such times as I received a stop signal. I would wait until the switch was lined for the shed and I received a back-up signal on receipt of which I would move eastward onto the shed track thereafter being governed by the hand signals as given to me by the Yardmen on the ground."

Then going down to the third question:

"Q. Were you told by Fireman E. Sloan on February 23 when moving westward on the long spur track prior to moving in on the shed track to stop the movement that a boy wearing skis had fallen down in front of your engine?

A. He certainly did not."

The last question:

"Q. You are absolutely certain on the date in question Fireman Sloan did not inform you that a boy wearing skis

"and crossing the tracks had fallen in front of the engine?

A. I am certain. This is the first I heard of it."

Q Did your investigation involve seeing other members of the crew?

A Yes, sir, I investigated this also with Yardman Lefebvre, Yardman Cudahy, the agent at the station, the operator and several of the assistant agents and none of these gentlemen heard about any boy or saw any boy on skis in the vicinity of Hull West at that time.

Q Please answer my friend.

BY MR. LEWIS:

Q These people from whom you took statements, Mr. Harris, all reside in Ottawa, do they?

A Yes, sir.

Q Right here in the city?

A Yes, sir.

Q I notice in your statement there is nothing to suggest that you asked the men whether they wanted any representative or any other employee present?

A No, sir.

Q You didn't ask them that?

A No, sir, I made it clear to these gentlemen that I was not taking these statements for

the purpose of disciplining them or criticizing them in any manner; I just was getting at the facts of these incidents.

Q That was, of course, what you were asked to do?

A Yes, sir.

Q Did you not investigate several incidents about which evidence was given by these Ottawa men?

A Yes, sir.

Q Did you take statements from people with regard to incidents you have not today referred to?

A That we have referred to today?

Q That you have not referred to today?

A Yes, sir.

Q And in those cases were the incidents as described here found by you to have been correct?

A Pretty much.

Q It is only these that you have presented to the Commission today where you thought you found a discrepancy?

A That is right, sir.

Q We might as well take them backwards, it makes no difference to me or to you, I suppose, Mr. Harris. This last one, Exhibit 358. Engineer Monahan just cannot remember ever having been told that there was a boy with skis who had

fallen in front of his engine or on the track?

A That is right.

Q He just can't remember?

A No.

Q Would you look at that statement, Mr. Harris, Exhibit 358, which was taken from Engineman Monahan? If you were just trying to get at the facts of that incident as I am sure you were, Mr. Harris, what would be the purpose of that question asking him how he would normally go about crossing over, with engine first and head west and so on?

A To point out that there were two yardmen ahead of him and again it would indicate too that he had a clear view, that he was looking ahead when he was watching these yardmen.

Q You thought if you asked him what he would normally do that it would necessarily follow that is what he would do on this particular day, is that it?

A And when he got the signal to move ahead I am sure Mr. Monahan would not move ahead if the switches were not directly lined up or if there was any obstruction, a car or anything on the track or any small boy on skis that was dangerously close to the track.

Q You are just sure Mr. Monahan would not do that?

A I am sure of that.

Q Now, in the same way how do you think you would get at any facts in the situation by asking him this question, the one that follows:

"Would you after receiving a proceed signal from a Yardman at the crossover switch look eastward and continue to look eastward until you received a stop signal and give no attention to the track ahead of you?"

A I believe I recall in that statement in the testimony as given by Mr. Sloan that the engineman was all the time looking back, he was paying no attention -- that is the way I got it, that the engineer was paying no attention to what was ahead of him, that he was just interested in what was behind him.

Q Suppose we agree that Mr. Sloan -- I will put it my way and see whether you accept it -- Mr. Sloan said that the engineman was looking back for signals and therefore was not looking ahead. That is what you got from the transcript, was it?

A But that is not the way that this engineman would work.

Q How do you know?

A I know it.

Q Have you been with him on engines?

A I have not been with him on engines but I have been with an awful lot of other enginemen.

Q And they are all infallible?

A No, they are not infallible but they certainly would be looking where they are going.

Q And they make mistakes sometimes?

A They do.

Q I am asking you how you thought you would get at the facts of this incident by asking Mr. Monahan this question:

"Would you after receiving a proceed signal from a yardman at the crossover switch look eastward and continue to look eastward until you received a stop signal and give no attention to the track ahead of you?"
What facts were you getting at in that question?

A As I told you before, Mr. Lewis, I gathered from the testimony that Engineman Monahan was only looking behind him and he never looked ahead, he was not interested in what was going on ahead but was just interested in the signals he was getting.

Q You are not saying from reading the transcript that Mr. Sloan said that Mr. Monahan

was not interested in what was going on ahead?

A No.

Q He just said he was looking for signals behind?

A That is right.

Q I think it was with regard to the previous incident of Mr. Sloan, Exhibits 356 and 357, that you added to the exhibits a comment that they were genuinely astonished that they were said to have been connected with an incident such as Mr. Sloan described, is that right?

A That is right, sir.

Q Did they express astonishment?

A They did.

Q Why isn't that in the statement?

A Pardon?

Q Why isn't it in the statement?

A Well, I didn't put it in there or they didn't put it in.

Q Well, actually you wrote the statement up, didn't you, on the basis of the answers they gave you?

A That is right, sir.

Q So if it is not in the statement you are the one who did not put it in?

A That is right, sir, it is my fault.

Q Perhaps the astonishment was not such as to impress itself on you at the time as much as it does in the witness box?

MR. SINCLAIR: Well now, just a minute, is that a question or a comment?

MR. LEWIS: It is a question.

MR. SINCLAIR: Well then phrase it as such.

MR. LEWIS: I phrased it as such.

MR. SINCLAIR: Maybe.

BY MR. LEWIS:

Q. Is that possible, Mr. Harris?

A. No, sir. If I could check up some of my notes I made a long time ago on this I think you will find the same comments I scribbled on that these men were astonished.

Q. Now, as to this incident dealt with in Exhibits 356 and 357 if you remember the transcript I think I am correct in suggesting to you Mr. Sloan said that the trainman gave no signal?

A. That is right, sir.

Q. The trainman Mr. Sauve says that he did give a signal to the fireman?

A. Yes.

Q. The engineer, Mr. Monahan -- the same person, by the way, as in Exhibit 358?

A. That is right, sir.

Q. The engineer Mr. Monahan all he says was that he saw a car cross the track himself?

A. Yes.

Q. And I read this very quickly, I hope

I am not wrong, but my impression was he said he took steps to stop the engine or the train without waiting for any signals or hearing anything?

A. That is right, he said that he had already taken steps to stop the movement before he had heard Sloan holler at him.

Q. He does say, does he (I can't recall at the moment) in Exhibit 356 that Sloan did call to him?

MR. SINCLAIR: That is right, the second page at the top.

THE WITNESS: He said:

"I would like to point out also I did receive a warning from the fireman but I had already shut the engine off before I received it."

BY MR. LEWIS:

Q. In effect what you have got is that each one of the three men, Sloan, Sauve and Monahan, each felt he had done his duty with regard to this crossing?

A. Perhaps, yes.

Q. Then, this incident in which engineman ...

BY THE CHAIRMAN:

Q. Was that a yard engine?

A. Yes sir.

BY MR. LEWIS:

Q. This incident that engineman Gale was

involved in, Exhibit 355, the incident on which fireman Blackburn had given evidence himself here and Gale was the engineer?

A. Yes.

Q. You did inform the Commission that there was a great deal of work being done on the rails in the yard on that day?

A. Right, sir.

Q. If I heard you correctly you said that the sectionmen put in bolts or did their work between the moves -- I think those were the words you used?

A. Yes sir.

Q. Am I right in understanding by that that as the engine and cars pulled past them they would get back to do the work and then when it backed up they would get out of the way again and then they would go down and do some work?

A. I believe that is exactly what happened in this case. As soon as the engine passed them this particular sectionman in question did drop to his knees perfectly conscious of the movement of the engine to proceed with whatever work he was doing.

Q. I don't think Mr. Blackburn knew and I did not get from your evidence that you found out the name of the sectionman who might have been involved?

A. No sir, we did not.

- Q. And in such a situation, Mr. Harris, would you not agree that it is possible that someone might bend down a little too soon or not get up quickly enough?
- A. Yes, that is possible, but I think our records show that it does not happen. It has not happened on any territory of mine.
- Q. What has not happened?
- A. That a sectionman failed to get up in time.
- Q. You mean in all the years you have been with the railway a sectionman has not done that?
- A. On any territory I have worked on at the time I was working on it no sectionman was ever caught in that manner.
- Q. Was a sectionman ever caught in any manner in any area you know of?
- A. Oh yes.
- Q. Has any sectionman ever been injured on any territory of yours while you were on it?
- A. Under different circumstances.
- Q. What kind of circumstances?
- A. In a severe snowstorm or under very stormy conditions.
- Q. Only under stormy conditions?
- A. That is all I can recall at the present.
- Q. You really are suggesting to the commission, are you, that you do not know of a sectionman having an accident in a yard under your supervision on any other day than the day on which there was a severe storm?

A. I have to say right at this moment, that I cannot recall. There may be, Mr. Lewis, but I cannot recall one incident at this minute.

Q. Would you read the last paragraph of Exhibit 355, Mr. Harris, or may I read it if you will check it please? Mr. Gale says in this statement:

"While on a yard engine or any other engine moving around any yard I keep a sharp and constant look-out in both directions for signals, other movements and in the wintertime I particularly watch out for Sectionmen who might be working on or near the track on which I am moving. At no time when running an engine to my knowledge did I come even close to running down one of these or any other employees."

Have you known Mr. Gale a long time?

A. I have seen Mr. Gale many times.

Q. I suppose he is a good engineer?

A. He is one of our good engineers.

Q. Is he one of your best engineers?

A. I would say. He has got a pretty good record.

Q. Is he quite as infallible as he suggests in that last paragraph of his statement?

A. Well, there again I mentioned that simply

because I believe the evidence said that here again this man was looking back and was not looking ahead. I wanted to point it out that this man when he is making a move like that is looking in both directions.

Q. At the same time?

A. Almost. They turn their head pretty rapidly. Especially when you are moving around in a yard like Ottawa you have got to.

Q. It is a busy yard?

A. It is a very busy yard and a very complicated yard.

Q. And if you do not look back and forward very quickly ...

A. You are in trouble.

Q. You are in trouble?

A. Yes sir.

Q. Now, exhibit 354?

A. Yes, sir.

Q. That concerns Mr. Post. Do you know Mr. Post:

A. Very well, sir.

Q. The gentleman sitting beside me here?

A. Yes, sir.

Q. Now perhaps it is not an entirely fair question, Mr. Harris, and if you do not want to answer it you are at liberty to speak to the Commission. You have known Mr. Post very well. From your experience



is Mr. Post given to shaving the truth a little or is he a pretty honest fellow on the whole?

A. That has not been my experience.

Q. What has not?

A. That he has been shaving the truth.

Q. He is on the whole an honest person, you would agree?

A. From any experience I have had with Mr. Post I would say he was.

Q. Would you agree also he is not a person easily given to exaggeration?

A. I don't know him that well.

Q. But from your knowledge?

A. From my knowledge.

Q. You would agree, would you not, that he does not usually exaggerate?

A. From my knowledge, yes.

Q. You agree?

A. Yes.

Q. And I take you to Mr. Barber's statement which is Exhibit 354. If I understand Mr. Barber's statement correctly as you wrote it down, Mr. Harris, his statement is that this girl walked on the shoulder of the track, is that right?

A. That is right, sir.

Q. That would be walking parallel with the track, would it not?

A. Parallel with the track.

Q. While Mr. Post's evidence was that this girl was crossing the track?

A. It would indicate that but I do not believe that his evidence said that.

Q. Well, there is that discrepancy between the two. Mr. Barber says this person was walking parallel to the track; Mr. Post said that this person was walking towards the track to cross it, is that not right?

A. No sir, I do not read that in Mr. Post's statement.

Q Well what did Mr. Post state?

A. He just said towards the end of it:

"as the girl was about to step on the crossing".

That is the only mention he made of it.

MR. SINCLAIR: I wonder if my friend would refer to the page. I refer to 5371 where he says "approaching" and I think that is what Mr. Barber says -- approaching and walking on the right-of-way on the shoulder towards the crossing.

MR. LEWIS: I am sorry to take a little time, Mr. Chairman, at this hour. I won't be much longer.

BY MR. LEWIS:

Q. Now, Mr. Post's statement on 5371 is:

'We were approaching a crossing just west of Rigaud and Mr. Barber was sounding the whistle signal for

"the crossing and I noticed a young girl approaching the crossing.

Apparently she did not hear or was paying no attention at all to the whistle signal. I did not have time to call to Mr. Barber and I knew that the application of the brakes would not do any good because we were travelling then I would say 65 to 70 miles an hour.

So I jumped from my seat, grabbed the whistle out of Barber's hand, and immediately gave some short blasts on the whistle. Then as the little girl was about to step on the track she lifted her head and saw us coming and stepped back and we went over the crossing."

Perhaps it is possible that there is not a discrepancy. I thought there was in that. Then, Mr. Barber speaks of a girl about 16 years of age -- right?

A. That is right, sir.

Q. And Mr. Post does not give us the age but he speaks of a young girl. Sixteen might be that or a little girl, I suppose sixteen might be a little girl too?

A That is right, sir.

MR. SINCLAIR: It all depends how old you are.

BY MR. LEWIS:

Q. Mr. Post states that as he grabbed the whistle cord and gave the short blasts "the girl lifted her head, saw us coming and stepped back and then we went over the crossing"?

A. Yes.

Q. But Mr. Barber in his statement -- I have not read carefully Mr. Barber's statement but he seems to suggest that the girl just nonchalantly and in a casual way kept on walking on the shoulder which would be on the ties?

A. No sir.

Q. By the side of the ties?

A. Quite a distance away, perhaps three or four feet from the edge of the ties. From the edge of the ties your track slips down to the shoulder.

Q. Do you know the Rigaud terrain at all?

A. Oh yes, I have been there quite a few times.

Q. Mr. Post instructs me there is a platform running **parallel** to the tracks?

A. Yes, that is on the south side.

Q. But no one states whether this girl was on the south side?

A. On the engineman's side.

Q. Where does Mr. Barber say that?

A. That is No. 1, of course. He said on his side of the track and, of course,

No. 1 is westbound which would make the girl on the north side of the track and the platform is on the south side.

Q. Mr. Barber said she walked apparently nonchalantly as I have said and apparently didn't step back at all, is that right?

A. That is right, sir, just turned off to the right about her business just as though nothing had ever happened.

Q. Just kept on going and on across?

A. That is right, sir.

Q. So that Mr. Barber's story to you -- and this is what I am coming to -- Mr. Barber's story to you of this incident is in these important respects the entire opposite of what Mr. Post's story was, is that right?

A. That is right, sir.

Q. The exact opposite?

A. That is right, sir. Mr. Barber said he recalled this incident very, very clearly and I think any time a fireman jumped off his seat and grabbed the whistle cord out of the engineman's hand he would not forget it.

Q. But those points are in contradiction?

A. That is right, sir.

Q. Now, Exhibits 353, 352 and 351 all deal with the same incident -- right?

A. That is right, sir.

Q. And they also deal with an incident about

which Mr. Post gave evidence in the witness box here?

A. That is right, sir.

Q. And Mr. Post was the fireman. Very briefly the story is outlined in the statement you wrote up from questioning the engineman and yardman Larkin and yardman Dupuis contradict what Mr. Post said to this Commission?

A. Only on one item, sir.

Q What is that item?

A. This man Dupuis did not fall under the car.

Q. That is the only item?

A. That is the only item that is important.

Q But Mr. Dupuis does say, does he not, that he fell (they are my words, not his) that he fell so close to the car he grabbed hold of the journal box to keep himself from getting hurt?

A. That is right, sir.

Q. That would be pretty close, wouldn't it?

A It would be but certainly not under the car. He would be no closer to it then, Mr. Lewis, than he would be if he was just walking by it.

Q. But when he fell and had to grab hold of the journal box to push himself off and Mr. Post was on the engine looking at his sitting position, is it not possible that Mr. Post might have mistaken Mr. Dupuis'

exact position?

A. Mr. Post could have been mistaken about his position, that is true.

Q. And since Mr. Dupuis had to grab hold of the journal box to save himself is it not true that if the train had not stopped an accident might have occurred?

A. No sir.

Q. Why not?

A. Not where they were going.

Q. What do you mean where they were going?

A. He had the whole length of a car behind him and I am sure that any man could get up on to his feet with a movement like that at the rate of speed they were going.

Q. But he had fallen because it was icy and he slipped?

A. That is right, sir.

Q. And he would be sitting on the ice presumably?

A. Yes.

Q. And he was hanging on to the journal box?

A. No sir, pushing with his hand.

Q. Pushing with his hand against the journal box?

A. That is right.

Q. Are you suggesting if the train had not stopped no accident could have occurred?

A. That actual box, I would say, is about eighteen inches away from the rail so

actually he was sitting about three feet away from the rail in no danger whatever. He just got up normally and went ahead with his business when the movement stopped.

Q. Have you ever seen this location?

A. I have been there, yes sir. I made it a point to go there before I took the statements.

Q. There are buildings on each side of the track?

A. On one side.

Q That is the side on which Mr. Dupuis fell?

A. That is right, the fireman's side.

Q What would be the distance between the track and the building?

A The track and the building?

Q Yes.

A Five or six feet.

Q And then there is an overlap of the car beyond the rail?

A. Yes.

Q. So that between the car and the building there would be only three to four feet

A. Four feet would be a good distance, yes.

Q. And the fact that Mr. Dupuis slipped as I have already told you showed that the condition was icy?

A It was icy, yes.

Q And Mr. Dupuis was apparently according to his statement crossing over to see

whether there were any obstacles on the other side?

A. That is right.

Q That is, the fireman's side **near** the building or between the track and the building?

A. Yes.

Q. That there would be nothing there to ~~follow~~^{follow} the track?

A. Yes.

Q. To make sure there was nothing there?

A. Yes.

BY THE CHAIRMAN:

Q Is this building fronting on Beechwood Avenue on the south side of the Rideau river?

A. No, it is quite close to Hall Avenue which is a very short distance, it is a very short distance from Hall Avenue.

MR. LEWIS: Mr. Post states it is by the Rideau river -- St. Patrick Street.

THE CHAIRMAN: Between the Rideau river and the extension of the Driveway.

MR. LEWIS: The Driveway, Mr. Post tells me, is between the building and the Rideau river.

BY MR. LEWIS:

Q. Then, without taking more time, you added after dealing with these exhibits, Mr. Harris, that Dupuis had said to you that he had never been in such a dangerous position or is that in his statement?

A. No, it is not, sir.

Q. That was something you added, was it?

A. Yes sir.

Q. And it is your claim that he referred to being under the car and sitting where he was after slipping was not a dangerous position, that is your evidence?

A. Yes sir, that is my opinion, sir.

Q. It was not a dangerous position?

A. No.

Q. Not even on icy ground in the winter?

A. No, sir, not under those circumstances sir. If there was a train travelling by him at a high rate of speed I would say it was an extremely dangerous position.

Q. To get back to this incident of the young girl walking along the shoulder, from your long experience with the railway that you would say a young girl assuming even that she was sixteen walking nonchalantly along the shoulder of a track with a passenger train going at 65 to 70 miles an hour -- would that be your experience, Mr. Harris?

THE CHAIRMAN: I didn't hear the question.

MR. LEWIS: I am asking Mr. Harris whether it would be his experience that a young girl of, say, sixteen years would walk along the shoulder of a track which I think you said was about three feet away from the rail?

THE WITNESS: Yes sir, at least that.

BY MR. LEWIS:

Q. Would walk about three feet away from the rails with a passenger train travelling at 65 to 70 miles approaching -- would it be your experience that she would walk nonchalantly and without care in those circumstances?

A. Yes sir, I believe that the girl had walked that route many, many times and she was familiar with every foot of it. She had also heard this train go by there every day. It is one train that operates on time and she knew she had plenty of time to get to that crossing ahead.

BY THE CHAIRMAN:

Q. I suppose you are speculating now, Mr. Harris?

A. It is my opinion.

BY MR. LEWIS:

Q. You don't know who the girl was, never spoke to her?

A. No, I don't think they ever spoke to her.

Q. It might have been her first walk there?

A. Yes sir.

MR. LEWIS: That is all.

MR. SINCLAIR: With the permission of the commission there was a matter that I overlooked asking Mr. Harris about if I might have permission.

THE CHAIRMAN: Go ahead.

BY MR. SINCLAIR:

Q That had to do with fireman Sloan and it had to do with an incident here at the local yard at volume 39 page 5445 and 5453 and at page 5491 and 5493. At that time he said that he called to the engineman to stop, the engineman was getting a signal from the yardman who was down at the switch to proceed and Sloan said he saw the switch was lined against them and although the engine was getting the proceed signal he asked the engineman to stop.

MR. LEWIS: I was talking to Mr. Post, I didn't hear my friend's beginning. Are you re-examining or going back to some other matters?

MR. SINCLAIR: I asked the Commission's permission.

MR. LEWIS: I beg your pardon.

THE CHAIRMAN: I think this is the only thing Mr. Lewis missed.

BY MR. SINCLAIR:

Q. In answer to Mr. Lewis' question I just want to read this and it is from Mr. Sloan and I am quoting:

"It would have damaged the switch by putting it out of commission probably to the extent of putting the engine off the track."

What is your comment on that? By the way, as you said to Mr. Lewis you substantially

found the incident was right?

A. Yes it is exactly as stated except that a switch being run through by a trailing movement such as this would not derail a train.

Q. What would have happened?

A. Bent the I-bolt possibly.

Q. How much would it have cost to have fixed that?

A. Oh, \$1.50.

Q. What about engineman Barber, this is exhibit 354, do you know engineman Barber?

A. I have spoken to him.

Q. Is he a good engineman?

A. I think so.

Q. In your dealings with him has he or has he not been straightforward?

8.

A. Yes sir.

Q. Is he accurate in relating incidents to you when you have had the experience?

A. Any experience I have had with him yes, sir.

Q. And he runs the Canadian, does he?

A. Well, that was a spare trip at that time.

Q. What is he running now?

A. I believe he is in the pool.

THE CHAIRMAN: Thank you, Mr. Harris.
Anything else

MR. SINCLAIR: No, that will close my rebuttal.

THE CHAIRMAN: Do you want to ask any questions, Mr. Lewis?

MR. LEWIS: I don't think so, Mr. Chairman. This could go on for a long time.

THE CHAIRMAN: Is there something else?

MR. SINCLAIR: No, what I was going to say to the Commission was that this concludes my rebuttal and I said a couple of days ago I think that we had arranged this movement with the dual control for tomorrow afternoon at two-thirty. Now, if it suits the convenience of the Commission I believe that that demonstration could be put on at 10:30 tomorrow morning if that would suit you.

THE CHAIRMAN: Is that all right with you, Mr. Lewis?

MR. LEWIS: Yes, sir.

MR. SINCLAIR: I would suggest that maybe if we could meet here or wherever it would be convenient -- at the hotel or here then we could move off together because I am not just sure and I don't know and I would have to make some inquiries just where we are going to go to pick up this engine.

THE CHAIRMAN: I would imagine the hotel would be a better place.

MR. LEWIS: Ten o'clock?

MR. SINCLAIR: 10:15 would be lots of time, I think, in the hotel.

THE CHAIRMAN: 10:15 in the lobby of the Chateau?

MR. SINCLAIR: I am told at the Experimental Farm, Canadian Pacific siding,

Dow's Lake, off the Prescott Highway, if somebody would rather go there or go to the hotel if that is more convenient -- I am not sure where it is.

THE CHAIRMAN: Is that not Canadian National Railways?

MR. SINCLAIR: We have joint trackage there, sir.

MR. LEWIS: I suppose the best way would be to meet in the Chateau.

THE CHAIRMAN: 10:15. Then, does that conclude the hearings apart from this viewing and apart from the argument?

MR. SINCLAIR: Yes sir.

THE CHAIRMAN: No more evidence?

MR. SINCLAIR: No, sir.

THE CHAIRMAN: And I understand that you would both prefer to have the argument commence on Monday morning next?

MR. SINCLAIR: Yes sir.

THE CHAIRMAN: All right, subject to tomorrow morning we will adjourn until 10:00 next Monday morning here for the first of the argument.

At 5:20 p.m. the Commission adjourned until 10:30 a.m., Monday, October 28, 1957.

ROYAL COMMISSION ON EMPLOYMENT OF FIREMEN
ON DIESEL LOCOMOTIVES IN FREIGHT AND YARD
SERVICE ON THE CANADIAN PACIFIC RAILWAY

62

PROCEEDINGS

DATE: October 28, 1957

PLACE: Ottawa, Ont.

PAGES: 8743 - 8896

VOLUME: 62

E. L. FEATHERSTON
SHORTHAND REPORTER
241 MANOR AVENUE
ROCKCLIFFE PARK
OTTAWA, CANADA

Chairman

- 8743 -

I N D E X

October 28, 1957

A R G U M E N T

SINCLAIR, I.D. 8745

ROYAL COMMISSION ON EMPLOYMENT OF
FIREMEN ON DIESEL LOCOMOTIVES IN
FREIGHT AND YARD SERVICE ON THE
CANADIAN PACIFIC RAILWAY .

Proceedings of public
hearing held at Ottawa,
Ontario, Monday,
October 28, 1957.

PRESENT:

Hon. R. L. Kellock,	Chairman
Hon. C. C. McLaurin,	Member
Hon. Jean Martineau,	Member
Douglas M. Fraser,	Secretary
A. R. Winship,	Asst. Secretary

APPEARANCES:

C. J. A. Hughes, Q.C.,	Representing the Commission
I. D. Sinclair, Allan Findlay,	Representing the Canadian Pacific Railway Company
David Lewis,	Representing the Brotherhood of Locomotive Firemen and Enginemen

Monday,
October 28, 1957.

62nd DAY

MORNING SESSION

---The Commission resumed at 10.30 a.m.

ARGUMENT BY COUNSEL

MR. SINCLAIR: May it please the Commission, the order in council appointing this Commission sets out three questions to be answered by the Commission. I propose to deal with these three questions in the order in which they are set out in the order in council. In the case of each question I shall indicate what, in my submission, the answer of the Commission ought to be in the light of the evidence and the observations and the travels the Commission have taken.

The Commission have been burdened with these proceedings for many months. You have received much detailed evidence and spent a great deal of time making observations on trains, on engines and in yards, both in this country and in Europe.

During the course of the proceedings the Brotherhood has suggested various reasons why in their view firemen are required on diesels in yard and freight service. The importance which they appear to have attached to the various reasons has shifted from time to time during the proceedings. I propose to deal with all of the various reasons they have suggested and propose to show why in my submission none of their reasons is supported by the evidence.



Before dealing in detail with the first question before the Commission there are certain matters I should like to refer to by way of introduction to it. I shall deal first with the dieselization of the Canadian Pacific.

The first diesel locomotive acquired by the Canadian Pacific was an experimental yard switcher which was built by National Steel Car Company of Hamilton in 1937 and was used in the Montreal yards.

Shepp - Volume 4, pages 470-471.

Crump - Volume 34, page 4845.

Exhibit 34.

It was at about this time that the dieselization of United States railways was getting under way. The Commission will recall that Mr. Crump in his outline of the historical development of the diesel locomotive stated that the mid-1930's saw the beginning of the remarkable transition to diesel-electric motive power in the United States.

Exhibit 278, page 8.

From 1937 until 1943 no further diesels were acquired by Canadian Pacific until 1943. In that year five Alco yard switchers were placed in service in Montreal.

Shepp - Volume 4, pages 471-473.

Crump - Volume 34, page 4847.

Exhibits 35 and 35A.

Additional yard diesels were purchased in each of the years 1944 through 1948 --

THE CHAIRMAN: The 1943 purchase was yard engines?

MR. SINCLAIR: Yard diesels. A picture of that will be found filed as Exhibit 34. In each of the years from 1944 through 1948 there were additional yard diesels purchased. At the end of 1948 the Canadian Pacific had 71 diesel yard switchers in service. Up until that time, however, the company had not acquired any road diesels.

Exhibit 166.

The first road diesels came into service on the Canadian Pacific in the year 1949 and from that time on the dieselization of the company has steadily increased.

Gossage - Volume 1, page 75.

In the year 1956, that is taking the year as a whole, about 48 per cent of the freight service transportation work was performed by diesel power; about 71 per cent of the passenger service; and about 68 per cent of the yard service.

Fraine - Volume 16, page 2108.

By the time Mr. Crump gave his evidence in May 1957 the proportion of

freight and passenger transportation work performed by diesel power had substantially increased over the figures for the year 1956. The proportion of yard work was about the same.

Crump - Volume 34, page 4843.

As the evidence shows, the Canadian Pacific in 1957 had purchased and taken delivery of 161 additional diesel locomotives and it is expected that the company will be substantially all dieselized by 1961.

Fraine - Volume 16 - pages 2108-2109.

Emerson - Volume 33, page 4549.

I want to say a few words by way of introduction in connection with the diesel rule as it has been referred to. The first two questions to be answered by the Commission arise by reason of the so-called diesel rule, which is a term of the collective agreements between the Canadian Pacific and the Brotherhood of Locomotive Firemen and Enginemen.

The diesel rule, stated very simply and without referring for the present to the exceptions to that rule, is that the company must employ firemen on all locomotives. This diesel rule appears as Article 11(f) in both the agreement for the Eastern Region and the agreement for the Prairie and Pacific Regions.

Exhibits 1 (page 24) and 2 (page 29).

The diesel rule had its inception in

the agreement dated February 28, 1937, between the United States railroads and the firemen's union. The dieselization of the United States railroads had just begun at that time, that is 1937, there being less than 147 diesels in operation in the United States, of which about 10 were in road passenger service with none in road freight service. There were a number in yard service prior to that agreement of 1937 in the United States and at least some of the switching diesel locomotives and some of the passenger diesel locomotives were being operated without firemen.

Loomis - Volume 28, pages 3770-3775.

The introduction of the diesel rule in the collective agreement with Canadian Pacific was first proposed --

MR. LEWIS: I am sorry, but I find it a little difficult and this is one which I would like to look up. I should like to have what reference 10 really is.

MR. SINCLAIR: Loomis - Volume 28, pages 3770-3775. Passenger locomotives, diesel power, had been operated without firemen on the Burlington, the New Haven and the Boston and Maine, under separate agreements with those roads, and on road power, passenger, the firemen were put on, and then subsequently

in 1937 this national agreement was signed which required firemen on all locomotives.

As I say, on the Canadian Pacific the introduction of the diesel rule was first proposed by the Brotherhood in 1947 and was agreed to late in 1948, becoming effective January 1, 1949.

Gossage - Volume 1, pages 63-64.

As the Commission will recall, I have already mentioned that at that time the Canadian Pacific had in operation only 71 diesel yard switchers. There were no diesels in road service.

THE CHAIRMAN: That was January 1, 1949?

MR. SINCLAIR: That is right, sir. These 71 diesel units on the Canadian Pacific, with one exception, were being operated with a fireman as a result of an understanding which the company, jointly with the Canadian National, reached with the union in 1943. The Commission will recall that I said that in 1943, from 1937 to 1943, the Canadian Pacific had one diesel. Then in 1943 it got five. It had none in the intermediate period 1937 to 1943. In 1943 this understanding was reached between the firemen's union and the Canadian Pacific and the Canadian National.

The union has insisted that firemen

be employed and the company finally yielded to the union pressure.

The next step is that in the negotiations leading to the introduction of the diesel rule into the collective agreement in 1948 the company was aware that the rule had been a part of the United States agreement for some years and knew that the union was prepared to force the issue in order to make it part of the Canadian Pacific agreement.

THE CHAIRMAN: The form of the agreement in 1948 simply gave formality to what has been an existing agreement in practice since 1943?

MR. SINCLAIR: Yes, sir, except it was perhaps a little broader. The agreement and understanding had to do with yard diesels, and now in 1949, effective January 1949, it applied to yard and road.

THE CHAIRMAN: The agreement of 1943 was specifically limited to yard engines?

MR. SINCLAIR: Yes.

THE CHAIRMAN: Or did it apply only to yard engines because that is all the Canadian Pacific had?

MR. SINCLAIR: That is correct.

THE CHAIRMAN: Which is correct?

MR. SINCLAIR: What is correct is that the Canadian Pacific got these five yard diesels in 1943 and in connection with

those specific ones there was this understanding which was carried out in subsequent years as the company purchased yard diesels, that is that firemen would be assigned, with one exception, that they would operate until 1949, January 1, one yard shift in Montreal without a fireman.

THE CHAIRMAN: As part of the agreement?

MR. SINCLAIR: It was the understanding that we would not go all the way with them. That is correct, that is part of the understanding.

THE CHAIRMAN: Supposing the company had purchased diesels for road service in, say, 1945, would the understanding have applied to them?

MR. SINCLAIR: No. The understanding was that that would have to be considered and agreed upon. That was implicit. I think that was the evidence.

In the negotiations leading to the introduction of the diesel rule into the collective agreement in 1948, effective January 1, 1949, as I have said, the company was aware that this diesel rule had been a part of the United States agreement and they were aware that the firemen's union were prepared to force the issue to make it part of the Canadian Pacific agreement.

Crump - Volume 35, pages 4851-4854.

I should like to say a few words now by way of introduction as to the negotiations to eliminate the diesel rule. As the officers of Canadian Pacific gained experience with diesels in road and yard service, it became increasingly apparent to them that the diesel locomotive could be operated satisfactorily without a fireman. It became obvious to the operating personnel that firemen were not required on diesels in road freight and yard service. Their elimination, however, as was stated in evidence, was not an operating problem but rather a problem arising out of the collective agreements.

THE CHAIRMAN: What do you mean by that?

MR. SINCLAIR: What I mean by that, sir, is that in the evidence of Mr. Crump or Mr. Emerson, I think, it was stated that while the operating people did not see any operating problem in eliminating firemen from yard service or road service diesels, there was the fact that there was this clause in the collective agreement and therefore it was a problem of labour relations, a problem of getting it out of the agreement rather than an operational problem.

Gossage - Volume 1, pages 79-80.

Emerson - Volume 33, page 4559.

Crump - Volume 35, pages 4854-4855

The question of the employment of firemen was discussed in the company's negotiating committee in 1952 and 1953. It was not, however, until the 1954 negotiations that the question of the employment of firemen was raised directly with the brotherhood.

Shepp - Volume 4, pages 480-481.

In the 1954 negotiations the Canadian Pacific --

THE CHAIRMAN: If this is important, I do not quite see the difference between the negotiating committee raising the question in 1952 and 1953 and what happened in 1954.

MR. SINCLAIR: Well, the evidence, my lord, was that in 1952 and 1953 the negotiating committee of Canadian Pacific among themselves discussed the problem.

THE CHAIRMAN: Oh, without mentioning it to the union.

MR. SINCLAIR: Without making a formal demand on the union, and it was not until 1954 that the matter was formally under notice to the firemen's union.

THE CHAIRMAN: The first notice was given in 1954.

MR. SINCLAIR: That is right. The

evidence is that this proposal was withdrawn as the result of union pressure and the evidence is that the company was not prepared to press the matter to final determination at that time. That is a quotation from Mr. Crump.

Shepp - Volume 4, pages 481-492.

Crump - Volume 35, page 4855.

Exhibit 36.

The next step was in February, 1956, when the agreements came open for notice. The company notified the Brotherhood that it intended to seek a change in the diesel rule so as to provide that diesels could be operated without firemen in freight and yard service.

Gossage - Volume 1, page 80.

Shepp - Volume 4, page 492.

Crump - Volume 35, page 4855.

The breakdown of these negotiations led to the setting up of a conciliation board, the hearings before that board during 1956, the report of the board on December 17, 1956, the strike in January, 1957, and finally the appointment of this Commission.

This matter has not been a matter of Canadian Pacific alone, although the development has been somewhat different. Canadian National and the United States railroads also advanced proposals early in 1956 for a change in the diesel rule in their agreements with the firemen's union.

In order that the Commission might know why both the Canadian National and the United States railways withdrew their proposals and reached agreement with the union without a change in the diesel rule, Mr. Gonder, Assistant Vice-President of Canadian National, and Chairman of the Negotiating Committee of Canadian National, and Mr. Loomis, Chairman of the Western Carriers Conference Committee in the United States, who acted as chief negotiator for the United States railroads, were called to give evidence.

Mr. Gonder stated that the proposal which Canadian National made in 1956 was that the employment of firemen in road freight and yard service should be at the discretion of the management. This proposal was, however, withdrawn during the summer of 1956 as at that time Canadian National did not feel that it had its facts and information in comprehensive and detailed enough form to adequately meet the situation.

Mr. Gonder stated that it was not because Canadian National felt that there would be any impairment of safety or efficiency that the proposal was withdrawn. He said that the Canadian National did not feel that it had secured the data in the way that it wanted it secured, but there were no doubts in the minds of the officers of Canadian National that the proposal was justified. Safety and efficiency

had nothing to do with its withdrawal, said Mr. Gonder.

Gonder - Volume 30, pages 4186-4189.

MR. LEWIS: Would you give the actual reference?

MR. SINCLAIR: Volume 30, pages 4186-4189. Mr. Loomis' evidence was that apart from one or two individual notices from individual roads the first notice seeking modifications of the diesel rule in the United States was one which was served on or about January 30, 1956. In the negotiations which took place in the fall of 1956, the proposal with respect to the diesel rule was withdrawn and a settlement reached on the basis of a three-year agreement.

The proposal with respect to the diesel rule, Mr. Loomis said, was withdrawn as a result of a balancing of interests. The conclusion reached by the negotiating committee, he said, was that it was best for the industry to seek a three-year agreement with all the unions, both operating and non-operating, and to do this they felt, that is, railway managements, that it was necessary to withdraw the proposal in regard to the firemen. He said that the non-operating unions had previously accepted a three-year agreement and they had had pattern settlements with all the unions.

Loomis - Volume 28, pages 3881-3890.

HON. MR. McLAURIN: When in 1959

does that agreement expire?

MR. SINCLAIR: / Well, I would not know the exact date.

MR. LEWIS: I think it is July.

MR. SINCLAIR: I will look it up. Mr. Gossage tells me it is in November of 1959. That agreement ran for three years from the end of 1956 to November, 1959. We will check that.

MR. LEWIS: / I think that is right. I thought it was July at first but I think it is November 1.

MR. SINCLAIR: November 1, 1959. Now, Mr. Loomis stated emphatically that safety or efficiency of operating road freight and yard diesels without a fireman had nothing to do with the withdrawal of the proposal by the United States railways in regard to the firemen's union. Indeed, said Mr. Loomis, the reason he came to give evidence at the request of the Canadian Pacific was to make this clear in view of newspaper reports that the United States railroads had dropped their proposal because of reasons of safety or efficiency in operation.

Loomis - Volume 28, pages 3890-3892.

Now, I should like to say a few words, with your permission, by way of introduction to the question of successful operation without firemen. In advancing proposals to eliminate the diesel rule from the collective agreements the railways have a good deal of experience on

which to base their view that the employment of firemen on locomotives in yard and in road freight service is not justified.

The Commission will recall that evidence was given of a number of railway operations which are being carried on without employing firemen on diesel or straight electric locomotives in yard or road freight service. The experience of those operations indicates, in my submission, that the absence of a fireman does not impair the safety or efficiency of the operations.

THE CHAIRMAN: Are you going to give us the references to back this up?

MR. SINCLAIR: I am going to give you all that in detail and tie it right into the transcript and also tie it into your observations.

Now, under the Canadian Pacific diesel rule, which I mentioned earlier, there were some exceptions as to the necessity of having a fireman. One of those exceptions is that diesels of under 90,000 pounds weight on drivers have been operated successfully in yard service without a fireman. The Canadian Pacific has had limited experience with this type of unit in yard service, but Canadian National has had considerable experience in Prince Edward Island and at Kamloops and Kelowna in British Columbia. There is also, of course, evidence of their

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Mr. Sinclair

successful operation by United States railways.

Fraine - Volume 16, page 2108.

Gonder - Volume 29, pages 4145-4155.

Shepp - Volume 4, page 495.

Kiley - Volume 28, page 3940.

Smith - Volume 60, pages 8455-8457.

MR. LEWIS: I am sorry to interrupt,
but perhaps my friend could give me the key.

MR. SINCLAIR: No, it does not bother
me at all. I am very glad to give it.

MR. LEWIS: All I want is the reference
rather than reference No. 18 which does not mean
anything.

MR. SINCLAIR: Reference No. 20 is
what I am dealing with now and that is Fraine,
Volume 16, page 2108.

THE CHAIRMAN: Mr. Lewis has not got
the key.

MR. SINCLAIR: No.

THE CHAIRMAN: Do you want to give it
to him?

MR. SINCLAIR: It is not that I do
not want to give it to him. I can make one up
tonight and give it to him.

THE CHAIRMAN: Reference No. 1, of
course, means nothing to him.

MR. SINCLAIR: What I said was that
if my friend wanted any specific reference I
would be glad to give it to him.

THE CHAIRMAN: He probably wants them

1. The first part of the paper is devoted to a general discussion of the problem of the existence of solutions of the system of equations

which are satisfied by the functions $u_i(x, y, z)$ and $v_i(x, y, z)$ in the domain D of the space E_3 .

2. In the second part of the paper the author considers the case when the functions u_i and v_i are assumed to be harmonic in the domain D .

3. In the third part of the paper the author considers the case when the functions u_i and v_i are assumed to be biharmonic in the domain D .

4. In the fourth part of the paper the author considers the case when the functions u_i and v_i are assumed to be triharmonic in the domain D .

5. In the fifth part of the paper the author considers the case when the functions u_i and v_i are assumed to be tetraharmonic in the domain D .

6. In the sixth part of the paper the author considers the case when the functions u_i and v_i are assumed to be pentaharmonic in the domain D .

7. In the seventh part of the paper the author considers the case when the functions u_i and v_i are assumed to be hexaharmonic in the domain D .

8. In the eighth part of the paper the author considers the case when the functions u_i and v_i are assumed to be septaharmonic in the domain D .

9. In the ninth part of the paper the author considers the case when the functions u_i and v_i are assumed to be octaharmonic in the domain D .

10. In the tenth part of the paper the author considers the case when the functions u_i and v_i are assumed to be nonaharmonic in the domain D .

all.

MR. LEWIS: I am such a shy person that I do not like jumping up every sentence or two.

THE CHAIRMAN: I appreciate that, Mr. Lewis.

MR. SINCLAIR: Unfortunately I am not going to finish my argument today. I thought my friend would have the transcript but I will prepare a key and give it to him. I will give him this one right now so that he can have it.

Fraine - Volume 16, page 2108.

THE CHAIRMAN: In fact, if it is going to mean anything to us we will have to have it too.

MR. SINCLAIR: The key?

THE CHAIRMAN: Yes.

MR. SINCLAIR: Very well, my lord. I will prepare it.

THE CHAIRMAN: If these references are short why not just read the references and then we will have them right here.

MR. SINCLAIR: Very well. This one is a good example. I have now been asked for the references on a statement I made and I will read what I have.

Fraine - Volume 16, page 2108;

Gonder - Volume 29, pages 4145-4155;

Shepp - Volume 4, page 495;

Kiley - Volume 28, page 3940;

Smith - Volume 60, pages 8455-8457.

That is the way I have tied this argument down.

THE CHAIRMAN: All right, it is on the record.

MR. SINCLAIR: You may become very tired of my voice before I finish and this may take a lot of time.

THE CHAIRMAN: If we do become tired we will tell you.

MR. SINCLAIR: If you want me to read them at the time, very well.

THE CHAIRMAN: There is no use doing it twice. You said a little while ago you were going to be specific in some instances.

MR. SINCLAIR: Yes.

THE CHAIRMAN: If it is something on which you are going to be specific I do not think you need to do it twice, if you are going to give us the specific reference later on.

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MR. SINCLAIR: Very well, I think I will just document as I go and tie it into the transcript and if there is any question you can turn it up.

That was one exception that was under the 90,000 pound rule in yard switching.

Under another exception to the diesel rule, Canadian Pacific and other railways have operated R.D.C. or Budd cars without a fireman and, although this is a passenger rather than a yard or freight operation, the fact that these high speed passenger units have been operated safely with only one man in the cab is, I submit, relevant to a consideration of whether the two men are required on diesels in yard service and whether three are required on diesels in road freight service.

Exhibit 190.

The Commission will recall some evidence about this, that the Canadian Pacific agreement is broader in this exception than the United States agreement. The United States agreement only permits one R.D.C. car to be operated without a fireman; the Canadian Pacific agreement provides that if you are going to operate more than one so that you go over 90,000 pounds you have to negotiate each operation with the union and the evidence is that the company has negotiated and the company is operating

quite a number of them -- I think 40, is the evidence. R.D.C. run in multiples up to five and in some cases seven.

THE CHAIRMAN: What was your reference to -- exhibit 109?

MR. SINCLAIR: 190. That shows, Mr. Chairman, that we have operated these Budd cars, substantially gas-electric cars, self-propelled units a very large number of miles and it is a comparison between the train miles operated by conventional construction steam and diesel with an engine-man and a fireman and the R.D.C. and gas-electric where it was operated without a fireman and where the ratio of the number of accidents per million train miles for the period 1949 right through to February 4th, 1957, was exactly the same as the ratio for operation of Budd car trains without a fireman -- it was 47, exactly the same.

Now, I did say that you had to negotiate under the agreement for individual operation when you went over 90,000 pounds. I am sorry what was done was a blanket negotiation so that we have now established in Canadian Pacific the right under the agreement to operate R.D.C. cars in multiple without a fireman, that is, it does not require any negotiations.

HON. MR. McLAURIN: This agreement, that

Mr. Sinclair

is not reduced to writing, is it?

MR. SINCLAIR: | Not the agreement, that was not reduced to writing.

HON. MR. McLAURIN: That is what I mean, the agreement?

MR. SINCLAIR: | No. It provides in the diesel rule --

HON. MR. McLAURIN: It is in the diesel rule?

MR. SINCLAIR: | Yes.

HON. MR. McLAURIN: The diesel rule is restricted to 90,000 pounds on the drivers unless there is a negotiation.

MR. SINCLAIR: I am looking at the Eastern Region agreement, that is, exhibit one. There was the exception with respect to yard and then there was a further exception in subsection (3) of article 11 (f) at pages 24 and 25 which provided for these self-propelled units but it went on to say --

"-- except that rail motor car installed subsequent to date of this agreement weighing more than 90,000 pounds on drivers, shall be a subject for negotiation between the Company and the Brotherhood of Locomotive Firemen and Enginemen as to whether such units shall be classified as locomotives."

HON. MR. McLAURIN: What have we on the record with respect to these negotiations?

MR. SINCLAIR: You have the evidence of Mr. Gossage and Mr. Shepp and Mr. Fraine.

MR. LEWIS: What do they say?

MR. SINCLAIR: Gossage and Fraine -- I gave them a few moments ago.

MR. LEWIS: I know but I cannot remember. If my friend could say what those witnesses said in summary.

MR. SINCLAIR: They said they had negotiated the right to operate these Budd cars in multiple without a fireman.

Now, the Commission will recall the evidence Of Mr. Borntrager --

HON. MR. McLAURIN: I do not want to be difficult but there was not anything reduced to writing but there was a deal made and it was conceded by both parties there was an agreement?

MR. LEWIS: That is my difficulty, Mr. Chairman. I do not recall.

THE CHAIRMAN: Well, Mr. Sinclair had better refer to the evidence.

MR. LEWIS: May I make this statement? I am quite ready to admit that since that date Budd cars have in fact been run in multiple without firemen. I do not

recollect anything in the evidence with regard to negotiations or decisions either written or oral that that could be done. It is a fact that that has been done.

THE CHAIRMAN: Mr. Sinclair says there is evidence and he will have it.

MR. SINCLAIR: Well, rather than take the time now to turn it up I will recall one thing to my friend and I think it will result in saving time. This matter was raised before the conciliation board in 1956 and the decision of that board upheld the position of the company that R.D.C. cars, that is, self-propelled cars could be operated with one man.

THE CHAIRMAN: Well, the rule says so.

MR. SINCLAIR: That is right.

THE CHAIRMAN: Well, what did the conciliation board add to that?

MR. SINCLAIR: Well, the firemen raised with the board under notice to the company that they wanted to change the situation, to apply a change in the rules to require a fireman.

THE CHAIRMAN: The rule was not changed?

MR. SINCLAIR: The rule was not changed.

THE CHAIRMAN: I understood there was

some agreement which is pertinent to paragraph (3) of 11 (f).

MR. SINCLAIR: Yes.

THE CHAIRMAN: Which extended its operation in some way. That is the difference.

MR. SINCLAIR: But with the rule not being changed the agreement was not extended. It was not reduced to writing. That is what I said. Then, as a result of the negotiation there was an understanding, a deal made and in recognition of the deal in 1956 the Fireman's Union raised specifically before the conciliation board the matter that would require the company to put firemen on these R.D.C. cars.

HON. MR. MARTINEAU: On the multiple units?

MR. SINCLAIR: On the multiple units, that is what we are talking about now, multiple. And the conciliation board did not agree with that and supported the position of the company. I say this is evidence of the carrying out of paragraph (3) of 11 (f) . And further when the matter was referred to this Commission that was further recognized by the agreement that is attached to Exhibit 1-A, that the only questions open were those specified. It says in exhibit 1-A, the last paragraph of the agreement, signed by Mr. Gamble and Mr. Crump, the very last page in the third paragraph:

"The terms and conditions of the agreement in respect of all

"outstanding matters other than the diesel rule, arbitraries and Mountain differential shall be in accordance with the report of the Conciliation Board."

THE CHAIRMAN: Well, Mr. Sinclair, I do not want to interrupt but personally I think section (3) says that the term "locomotive" does not include:

"Gasoline, diesel-electric, gas-electric, oil-electric or other rail motor cars, which are self-propelled units (sometimes handling additional cars) but distinguished from locomotives in having facilities for revenue lading or passengers in the motor car, except that rail motor cars installed subsequent to date of this agreement weighing more than 90,000 pounds on drivers, shall be a subject for negotiation between the Company and the Brotherhood of Locomotive Firemen and Enginemen as to whether such units shall be classified as locomotives."

Now, what is the extent your agreement has changed? Has it enlarged that or has something been done under that?

MR. SINCLAIR: Something has been done under it that the company has negotiated with the union the right to operate self-propelled units in multiple without a fireman which would under rule 3 have required a fireman.

HON. MR. McLAURIN: But you had a negotiation under (3)?

MR. SINCLAIR: Yes.

HON. MR. McLAURIN: When did you have it, what kind of negotiation was it, was it verbal or in writing and when was it done?

MR. SINCLAIR: It is in verbal and the evidence -- well, I have given the references. I will have to turn them up and look them up and put what there is if you want me to do it to you.

THE CHAIRMAN: No, you don't have to do it now. It might take several hours to do it now. You can do it and give us the references.

MR. SINCLAIR: Very well, I shall do so.

THE CHAIRMAN: Just looking at paragraph (3) it does not say anything about multiple or single.

MR. SINCLAIR: No, my lord, but a diesel car running in multiple weighs more than 90,000 pounds.

THE CHAIRMAN: Well, I have heard that statement before. Where do you get that, in the agreement or is that common ground?

MR. LEWIS: There is no doubt about that. If you have two engines running together you are over the 90,000 pounds and there is no conflict either about the fact that they have been run without a fireman. I just do not recall there being any evidence about any negotiations about it.

MR. SINCLAIR: I will turn it up.

MR. LEWIS: My memory may be at fault.

MR. SINCLAIR: I will read after lunch the exact extract.

THE CHAIRMAN: Well, the fact is they have been operated by the company in multiple without fireman as a result of an agreement with your union?

MR. LEWIS: Well, I think what happened, Mr. Chairman, was that they have been running in multiple -- if my memory of the evidence serves me right they have been run in multiple without firemen without any protest by the brotherhood until 1956 when they raised the issue and when, as my friend quite correctly says, the Board of Conciliation in 1956 supported the

company on this. But I do not recall anything in the evidence that there had been positive negotiations.

THE CHAIRMAN: How long has that practice obtained?

MR. LEWIS: Ever since they have run it, Mr. Chairman. I forget the year they started running diesels in multiple but if my memory serves me right it did precede the last agreement, it did precede 1954 by some years. I don't think this is in the evidence but there have been snorts by the brotherhood, as it were, from time to time but the thing was not raised at all.

THE CHAIRMAN: And when you did raise that point of view before the Conciliation Board, the Conciliation Board found against you?

MR. LEWIS: That is right. That is a different story again. My learned friend read the last paragraph from exhibit 1-A and gave it by implication a meaning which I do not think is there. The settlement which Mr. Gamble and Mr. Crump signed, the third paragraph reads:

"The terms and conditions of the agreement in respect of all outstanding matters other than the diesel rule -- "

Well, the diesel rule is on. So nothing was granted by the settlement.

HON. MR. McLAURIN: Well, the worst that has happened is that you had been working on it for the last several years?

MR. LEWIS: There had been no agreement that the Budd cars in multiple should be run without a fireman, I don't think at any time.

THE CHAIRMAN: Well, I suppose Mr. Sinclair will say that --

MR. SINCLAIR: Was you dere Charlie? That is what I am going to say.

THE CHAIRMAN: Excuse me a moment. If this company has operated these cars in multiple since 1954 and you brought this matter up before the Conciliation Board and the board ruled against you, then even though that document says that other than a diesel unit itself provides that rail motor cars installed subsequent to the date of this agreement weighing more than 90,000 pounds on drivers, shall be a subject for negotiation between the company and the Brotherhood of Locomotive Firemen and Enginemen, just speaking out of hand I would think that if it came into negotiation in that sense before the board and the board has passed on it how could you assume everything else was settled? How could you raise that matter that you had protested about before the board until there is a new agreement to be negotiated?

MR. LEWIS: That may well be so, Mr. Chairman. I think perhaps if I say this to

the Commission it might help us not to take time on a point which, unless I do not see it correctly, seems to be tangential to the issue. Budd cars are passenger trains when they go in multiple. The question for this Commission is limited to yard and freight road service.

Now, my learned friend obviously wants to use, and clearly is entitled to use the Budd car experience to support his statement to this Commission. All I am saying is that, unless the evidence clearly shows that we have given up something which he says we have given up, I cannot agree to it. I do not remember the evidence saying that we had given up the right to negotiate that we now have under article 11(f)iii. I do not recall anything about that. But surely, so far as this commission is concerned, that particular point does not arise because it is a passenger train, and whether or not it will arise again in the future is something that surely is not in issue here.

THE CHAIRMAN: It may be so, but Mr. Sinclair wants us to have this piece of evidence from the realm of passenger experience, and he asks us to apply it to the realm of freight. If, so far as the rule is concerned, there are more rail motor cars operating than those that were in existence at the date of the agreement, you are precluded from saying that they are in contravention of this agreement. We are not going to decide anything we do not have to decide.

MR. SINCLAIR: I have the reference now. It is volume 1, page 68. Mr. Gossage referred to this exception and after having read it, I asked this question:

"Q. Haven't there been any of these

" negotiations since this came into effect on the Canadian Pacific?

- A. Yes, subsequent to this on what are known as Budd cars or dayliners which are rail motor cars, self-propelled, which can be operated in multiple; that is to say they can be coupled together and operated from one control. When more than one of those cars is operated in multiple the total weight upon the driving axles is in excess of 90,000 pounds. However, it was agreed because units would be operated without a fireman being assigned --
- Q. How many of them on the Canadian Pacific are operated in multiple? Up to how many?
- A. I understand that up to five have been operated in multiple. I myself have seen three, but I understand that five have on occasion been operated in multiple.
- Q. Without a fireman?
- A. Yes.
- Q. Are there regular assignments of these rail diesel cars on the Canadian Pacific in multiple unit operating without firemen?

"A. Oh yes. A number of them."

THE CHAIRMAN: I have a vague recollection, maybe I am wrong in this, but I think that if you have more than one, two or three or so many -- I don't know whether it was by agreement or arrangement -- you add another crew man on the consist.

MR. SINCLAIR: That was another piece of evidence. I think that was given by Mr. Fraine, and also some of it by Mr. Emerson.

THE CHAIRMAN: You do not need to wonder about it. If there is such evidence, you can refer us to it.

MR. SINCLAIR: I think it had to do with this, that if you had an engine and two cars, there would be an engineman and conductor; three cars, there would be an engineman, conductor and one trainman.

THE CHAIRMAN: That is what I had in mind. Was that an arrangement with Mr. Lewis' clients or with the trainmen?

MR. SINCLAIR: With the trainmen.

HON. MR. McLAURIN: Mr. Gossage still doesn't say whether it was a verbal or written agreement or when it was made. We have not that evidence. He does not even say whether it was in writing or verbal.

MR. SINCLAIR: I believe there is evidence to show that it was verbal. I will look it up, if it is important to establish. I

do not remember evidence as to the exact date, but I do remember it being verbal.

THE CHAIRMAN: The only thing is, if you give us something we want to know what the facts are. We do not want to make a mistake in the facts.

COMMISSIONER MARTINEAU: The evidence shows that this was an agreement between the parties; it was agreed between the parties.

MR. SINCLAIR: That is right. The point I was making that I thought was relevant was that we did have this experience and we did show what our accident experience was in relation to it. Then, in the United States, I said there was a difference between our agreement and the United States agreement and I was just moving into that.

THE CHAIRMAN: It is a fact that you have had the experience and you want to carry it a step farther, as I follow your argument, and say Mr. Lewis' clients have recognized that was a proper arrangement.

MR. SINCLAIR: I do say that, and the evidence in support of that is given by Mr. Gossage to which I have referred.

THE CHAIRMAN: If there is anything else, you can refer us to it.

MR. SINCLAIR: I was going to make a reference to the evidence of Mr. Borntrager of the United States. I believe the Commission

will recall his evidence relating to their experience with multiple unit operation out of Grand Central station. It is an electric operation, multiple unit cars running in trains up to sixteen cars and obtaining a top speed of 60 miles an hour. The evidence is that in over fifty years this service has been operated with only one man in the control cab. The safety of that operation under those conditions was dealt with by Mr. Borntrager in this way, and I am just going to read a small bit of the evidence from volume 6, page 751, and it goes right through to page 758.

THE CHAIRMAN: About the middle of the page, is it?

MR. SINCLAIR: Yes, what I have here is,

"Q. What has been your accident record for that type of operation?

A. It has been a very good one."

THE CHAIRMAN: That is not on page 751.

MR. SINCLAIR: Where I am reading from is page 757, right at the bottom of the page:

"Q.. What has been your accident record for that type of operation?

A. It has been a very good one.

Q. Have you ever considered trying to improve it by putting the fireman up there to assist in

" maintaining a better lookout
for safety?

A. We have had this operation in
effect over half a century and
with our excellent record I would
hate to tempt fate now to try to
take it and put somebody else into
it."

THE CHAIRMAN: Have these cars been
running for over fifty years?

MR. SINCLAIR: That is right.

THE CHAIRMAN: Electric cars?

MR. SINCLAIR: Electric; then, Mr.
Borntrager went on to state that they had a
successful experience with Budd cars. They had
twenty in operation and he said, because of the
agreement with the Firemen's Union on the New
York Central, if Budd cars ran singly no fireman
was employed but if they ran in multiple a fire-
man has to be added to the crew. In this latter
respect it differs from the Canadian Pacific at
this time.

Borntrager -- Volume 6, page 751 to 758.

The railways also have had a great
deal of experience in the operation of electric
locomotives without firemen where there is no
collective agreement requiring the assignment
of firemen.

Canadian Pacific is successfully
operating electric locomotives without a fireman

in yard and road freight service in the area between Port Dover, Galt and Waterloo, in Ontario. In the United States there is substantial operation of electric locomotives, some of very powerful type, which are operated in road freight service without a fireman.

Emerson, Volume 32, pages 4417 to 4423.

Kiley, Volume 28, pages 3951 to 3965.

In addition, there is evidence of the successful diesel freight operations of the Quebec North Shore Railway and of the Aroostook Valley Railway, neither of which are required by their collective agreements to employ a fireman.

HON. MR. McLAURIN: Whose evidence was that?

MR. SINCLAIR: For the Quebec North Shore it is Bybee, Volume 27, page 3696, and for the Aroostook Valley the evidence is Mr. Emerson, Volume 32, pages 4424 to 4425.

THE CHAIRMAN: What is the Aroostook Valley?

MR. SINCLAIR: It is a subsidiary of the Canadian Pacific and operates a railway in Maine.

THE CHAIRMAN: What was the experience there, what kind?

MR. SINCLAIR: I am going to deal with it specifically later. I am mentioning it by way of introduction to show that there has been this successful operation and I will deal with

it later.

THE CHAIRMAN: Do you think there is any economy of time in mentioning them seriatim and then going back to deal with them?

MR. SINCLAIR: With a record of this size, everybody has to follow some plan. I was going to prepare a plan whereby I would introduce them and then follow them in detail. With your permission, I should like to deal with it in the way I have worked it out.

THE CHAIRMAN: You need no permission for that.

MR. SINCLAIR: Otherwise, I may not be as helpful as I could be.

The Commission has had the opportunity of examining the operations of electric and diesel locomotives in yard and road freight service in Europe where firemen are not employed. The safety statistics of the European railways show that these operations are being carried on as safely as operations in Canada where firemen are being employed. That is shown by Exhibit 181.

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It is clear, therefore, that railways have had very considerable experience in operating locomotives without firemen and that they have done so without sacrificing safety or efficiency. The fact that railways have had this experience is most important, in my submission, to a consideration of the main issue raised before this Commission.

It is also important, I submit, to a consideration of what weight should be given by the Commission to the opinions expressed by officers of the Company that firemen are not required on diesels in yard and road freight service. There is experience to support these opinions.

On the other hand, I think it is not unfair to suggest that the opinions expressed by Brotherhood witnesses that firemen are required are not based on experience. No Brotherhood witness who expressed the opinion that firemen are required stated that his opinion was based on experience he had had in operating without a fireman or on his observations of operations without a fireman. Moreover, no attempt was made by counsel for the Brotherhood to disprove the Company's evidence that operations which are carried on without a fireman are carried on safely and efficiently.

Now, Mr. Chairman and members of the Commission, the first question before the Commission reads:

"Are firemen(or firemen(helpers)) required on diesel locomotives in freight and yard

"service of the Canadian Pacific Railway (including the Eastern, Prairie and Pacific regions and the Quebec Central and Dominion Atlantic Railways)?"

In the light of that question I just wish to state briefly, and this will complete my introduction of the matter, the position of the Canadian Pacific based on their study of existing operations and in the light of their experience. The officers of Canadian Pacific who are charged with the duty and responsibility of operating the railway safely and efficiently have come to the very definite conclusion that the elimination of firemen from diesels in road freight and yard service will not adversely affect the safe and efficient operations of the railway, and may indeed improve safety and efficiency.

I should like to quote from the evidence given by Mr. Emerson, Volume 32, pages 4534-4537. I questioned Mr. Emerson as follows:

"Q. Mr. Emerson, in view of your experience, in view of your responsibilities with regard to operations and with regard to the efficient operation of the Canadian Pacific and its proper functioning, are firemen in your opinion required on road freight and yard diesels?

A. No, they are not.

Q. In coming to that opinion what have you taken into account?

"A. First of all I have looked at it from the question of safety. Now, the only contribution that a fireman can make to safety in operations -- I am dealing with this in principle, in theory -- would be from the standpoint of lookout. In yard service, to take that first of all, with proper positioning of the ground crew the fireman is not necessary. In road service we have the head-end trainman on the left-hand side of the cab and it is not necessary to duplicate his performance as a lookout.

Q. You say if the ground crew position themselves properly. Do you or do you not believe that the removal of the firemen will have some effect on that?

A. I believe that the removal of the fireman will improve our position on safety. In the first place, it will compel yard crews to position themselves properly where they can work in the view of the engineman. In so doing this will remove the situation in which, through division of responsibilities, unnecessary division of responsibilities, mishaps can and have taken place.

Q. In your opinion, Mr. Emerson, is there any other way in which the removal of a fireman would affect the safety factor?

"A. Well, another question considered was the aspect of his mechanical duties.

Q. I was thinking of safety. You talked earlier about removing the unnecessary division of responsibility?

A. Yes.

Q. Now, have you in mind anything in particular in regard to that, Mr. Emerson -- in regard to distraction or anything of that nature that we have heard something about here?

A. Yes, I have heard the remark here about the possibility of firemen being a source of distraction to other members of the crew and I agree with it. I think it is desirable to remove it.

Q. Mechanical duties, Mr. Emerson?

A. As to mechanical duties, the simple fact is that the advent of the diesel engine has removed the last vestige of the mechanical duties of firemen and there is nothing left for them to perform.

Q. Efficiency?

A. As to efficiency, the removal of firemen will not adversely affect the efficiency of our operations.

Q. Now, those are your views personally?

A. They are.

Q. And in coming to your own personal views, have you or have you not consulted with

"the officers who are under your jurisdiction and have responsibility at their own levels for the safe and efficient operation of the railway?

A. I have consulted in the course of my travels over the system and had discussions with officers on operating matters. I have had occasion to seek from a number of them their views on these questions and I know of no operating officer of the company who does not believe that firemen can be -- let me put it this way -- that diesel locomotive in freight and yard service cannot be operated safely and efficiently without firemen."

THE CHAIRMAN: Before you leave that, there are at least two points there. One is the position of the fireman from the standpoint of lookout, that he is of no use. The other is that his presence there is a distraction.

With respect to the latter, as I recall your offer, it was that these men would be kept on the engines for a certain period.

MR. SINCLAIR: Yes.

THE CHAIRMAN: How does that gibe with the contention that their presence is a distraction?

MR. SINCLAIR: Only in this way, Mr. Chairman. The realities of the situation are such that that has to be done, in our opinion, in fairness to the men who have been employed. In our submission

we would have to take them along with the requirement to keep these men in service. I will be dealing with that when I deal with Question No. 2. It is what I would call a balancing of realities and necessities in dealing with this very unusual situation.

THE CHAIRMAN: I am only thinking of the weight of the argument.

MR. SINCLAIR: The other piece of evidence which I intended to read at this time -- I am taking the senior operating officers -- is that of Mr. Crump, to be found in Volume 35, pages 4869-71. I questioned Mr. Crump as follows:

"Q. Mr. Crump, in the light of your experience and in view of your responsibilities, in your opinion are firemen required on yard and road freight diesels?

A. Well, it is firmly my opinion, in the light of my experience, that the firemen on yard and road freight diesels can contribute nothing to the safe operation or to the efficiency of the operation.

Q. What effect, in your opinion, based on your experience, would the removal of firemen have on the balance of the engine and train crew in freight and yard service?

A. Well, the removal of the firemen from freight and yard diesels, I think, might well result in the remainder of the crew becoming more alert and perhaps it even might result in an improved safety showing.

"Q. In arriving at your conclusions because of your experience in steam operations was that or was that not a factor to which you gave some weight?

A. Oh yes, that is a natural result of my environment and thinking through the years. I have a great many thousand miles on steam locomotives. A great many of those miles were travelled on steam locomotives in passenger service both hand-fired and stoker-equipped and from my experience, particularly on hand-fired locomotives, where the fireman spent a great deal of his time on the deck, I do not think that his removal would be prejudicial to the safety in any way.

Q. And with regard to yard service, was there any special factor that you took into account in reaching your conclusion?

A. Yes, I have discussed this matter with a great many of my officers and from my own observations which are not as a yard expert, but nevertheless I feel that provided the ground crew -- the ground yard crew -- position themselves correctly that they can transmit their signals directly to the engineer.

Q. In your opinion, Mr. Crump, has the coming of the diesel and its effect on the work load -- if I may use that phrase -- of the

"firemen, had any effect on firemen?

A. Oh, I think so. The automatic features of the diesel locomotive have certainly, in my opinion, rendered the fireman's job unnecessary as he has no active work to do and I am sure that many of our firemen realize this just as well as I, as they are the subjects of this automation, and I think they themselves must feel that -- well, perhaps putting it plainly, that they are not earning even a fraction of their pay.

Q. And why are they there, in view of that?

A. There is only one reason why the firemen are retained on road diesel and freight locomotives --"

I think that should be "yard diesels and freight locomotives.

"-- on the Canadian Pacific at the present time and that is purely as a result of union pressure and for no other factor."

Being firmly convinced that firemen are not required in road freight and yard service the Company feels very strongly that it should not be required to employ firemen in these services by a term of its agreement with the Brotherhood.

As I said in my opening, it is the Company's position that the so-called diesel rule in the collective agreements is merely a make-work rule and has no justification whatsoever. In my submission

it should be left to management, which is responsible for the safe and efficient operation of the railway, to decide how many men are required to perform any given service. In my submission the evidence which the Commission has received clearly supports the Company's position that the so-called diesel rule should be modified so that the Company is not compelled by the collective agreement to employ firemen in freight and yard service.

That completes what I have to say by way of introduction. I would like now to deal with the evidence directed to the employment of firemen on diesels in yard service. I will deal later with the evidence as to their employment on diesels in road freight service. That was the pattern we followed in the evidence and it is the pattern I propose to follow in my submission.

THE CHAIRMAN: To deal with yard service first?

MR. SINCLAIR: That is right. I will do that in every case as I go through this. I will clean up yard service and then I will turn to road service. I am doing that in connection with Question No. 1, and when I come to Question No. 3 I will deal with yard service and then road service.

The principal yards operated by the Company are at Montreal, Toronto, Winnipeg, Calgary and Vancouver. There are numerous other smaller yards, but those are the main ones.

Officers of the Company who are thoroughly

with each of those yards were called to explain how operations are carried on in them and to express their views as to the need of employment firemen for the safety and efficiency of these operations. I would like to remind the Commission very briefly of the views expressed by these witnesses and in doing so I wish to emphasize that these are men who directly bear the responsibility of seeing that the Company's operations in yards are carried on safely and efficiently.

The evidence as to the operations in the Montreal yards was given by Mr. Johnson and Mr. Lefrancois. Mr. Johnson has worked in the various yards in Montreal since 1926 and is at the present time General Yardmaster at St. Luc. His personal conclusion is that the Montreal yards could be operated safely and efficiently without firemen. He said that other officers of the Company in the Montreal yards had given consideration to this question and were of the same opinion. Mr. Johnson's testimony will be found at Volume 9, pages 1121-1122 and Volume 10, pages 1233-1234.

Mr. Lefrancois has worked in Montreal yards since 1918 and is now Assistant Superintendent of the Montreal Terminals. His opinion also is that firemen do not contribute either to the efficiency or to the safety of yard operations.

Lefrancois -- volume 10, pages
1237-1238.

Volume 11, page 1336.

Now, dealing with Toronto, evidence as to operations in the Toronto terminals was given by Mr. Alver who is superintendent of Toronto terminals. Mr. Alver's experience in the Toronto yards goes back to March, 1913 -- a total service of 44 years, all in yard work. His opinion is that the removal of firemen from diesels in yard service will have no effect on the company's safety program or efficiency. He thought it might improve the situation because the ground crew will take up their proper positions at all times, which on occasion, he said, they are not now doing.

Alver -- volume 14, pages 1880-1883.

Volume 15, pages 2002-2003.

I think I should say that I have tried to put together his evidence in chief and his cross-examination. I have done that throughout, I hope.

Mr. Kelley has worked in yards since 1915, --

THE CHAIRMAN: This is Winnipeg.

MR. SINCLAIR: Yes, and Calgary.

Mr. Kelley has worked in yards since 1915 -- a period of 43 years, most of the time in Calgary and Winnipeg. He is at present superintendent of the Winnipeg terminals.

His opinion is that if firemen were removed from yard diesels in Calgary and Winnipeg it would have no effect on the safety of the operations in those terminals, nor would there have to be additional assignments.

Kelley -- volume 12, pages 1582-1584, page 1604.

Volume 13, pages 1632-1633.

Mr. Shepp worked in yards at Winnipeg, Calgary and Vancouver from 1918 until 1946, serving as general yardmaster both at Calgary and at Vancouver and as assistant superintendent and superintendent at Vancouver. Since 1946 he has been an advisor to company officers over the system on yard matters. His opinion is that if firemen were removed from yard diesels in the Calgary and Vancouver yards, there would be no change in efficiency and in fact it might possibly increase. He also thought that it might result in an improvement in the safety of yard operations.

Shepp -- volume 3, pages 363-372; pages 415-417.

Volume 4, page 432.

Now, Mr. Chairman and members of the Commission, I do not for a moment suggest that the Commission should accept the opinions of these witnesses without having satisfied themselves from an examination of the evidence and from their own observations that these

opinions are sound. I do suggest, however, that the Commission is entitled to attach a good deal of weight to the opinions of these witnesses in view of the fact that they are the men who will have the responsibility of operating the yards of the company if firemen are removed from diesels in yard service. It is their job. Being in that position, it is most unlikely that they would express the opinion that they can operate the yards safely and efficiently if they were not fully convinced, from observation and knowledge, that they can back up that opinion with actual performance. You have seen them on the stand. They are not the kind of men who would place themselves, I suggest, in a position where they cannot carry out what they say they can do.

The Commission will recall that a number of the witnesses of Canadian Pacific rode regular assignments in yards and recorded for the Commission the results of their observations. These reports gave times, crews and dates which enabled my friend through his clients to check them. While on one or two occasions in cross-examination he did suggest that information he had received did not support fully what was in the reports, he did not call any evidence to support these suggestions in regard to the matters that he raised.

These trip reports of yard operations

in Montreal, Toronto, Winnipeg, Medicine Hat and Vancouver, amounting to about 50, together with other yard evidence and the Commission's own observations, give it, in my respectful submission, a solid basis upon which the Commission can find that firemen are not required on yard diesels on the Canadian Pacific. These trip reports, for example, are supplemented by evidence and are supplemented by the observations of the Commission, and in my respectful submission this large body of evidence shows without question that there is nothing that the fireman can usefully do which is not an unnecessary duplication of the work of other employees. These trip reports are exhibits 37, 54, 61, 71, 80 and 122.

THE CHAIRMAN: What is the type of thing you say these exhibits show?

MR. SINCLAIR: For instance, they showed that they made various kinds of moves, that the engineman, if he was taking signals from behind or in front of the engine if it was moving cab first, did turn and make the necessary observations. They showed that signals could be relayed directly to the engineman by the ground crew properly positioning themselves, without difficulty and with efficiency. They showed, for instance, that the engineman would have his head out the window

while the fireman was calling car signals that he did not hear. They show also that at times the fireman would call one signal while the engineman was getting a different signal from a man in a better position to observe, namely, a yardman. They showed that the work throughout the yards was conducted with the fireman, in my respectful submission, not performing any useful work and that what he was doing was an unnecessary duplication of the work of other members of the company's staff.

The position of the Brotherhood is that the safety and efficiency of yard operations, if I may phrase it thus, will suffer if firemen are removed from diesels in yard service. As I understand their position, it is this, that a fireman is required for various purposes and I have classified them under four heads. This is what I gather from cross-examination and from their evidence.

1. The fireman, they contend, is required to act as a lookout. I gather that this is regarded by the Brotherhood as being the fireman's most important function in yard service.

2. The fireman, they contend, is required as a signal passer.

3. There is some suggestion in the evidence that they regard the fireman as being

required to give mechanical assistance to the engineman.

4. Finally, they also appear to regard him as being required to assist in the event of an engineman suffering a seizure or blackout.

Those are the four purposes as they can be gathered, in my view, from the evidence and cross-examination.

I do not think that the Brotherhood have laid any great stress on what I have classified as duties three and four, that is, mechanical assistance and seizure or blackout.

Considerable evidence was adduced both by the company and the Brotherhood witnesses relating to each of the four classes of duties. I would now like to review this evidence and I will do it in the order in which I have placed them.

I will deal first with the most important duty of a fireman in yard service from the viewpoint of the Brotherhood, I gather, that is, keeping a lookout. I should like to say a few words in a general way first. The diesels which have been introduced into yard service have replaced hand-fired steam locomotives because oil-fired and stoker-fired steam locomotives are seldom used in yards. Evidence was given regarding the firing duties of a fireman on a hand-fired steam locomotive in yard service

and as to how much time he would have to spend on the deck attending to his fire and not be available as a lookout.

Whatever conclusion may be drawn from this evidence as to the precise time required by a fireman on a hand-fired steam locomotive in yard service to tend his fire, I suggest that the evidence of the use of steam power in yards establishes three facts which are of some significance in dealing with question No. 1.

In the first place, this evidence establishes that the engneman on a steam locomotive in yard service did not have as favourable conditions in which to keep a lookout as the engineer on a diesel yard switcher. His view ahead was obstructed to a greater extent by the boiler of the steam locomotive, his front window was smaller and his vision was obscured by steam and smoke, while his view backing up was obscured by the tender.

The second fact of significance is that the fireman on a steam locomotive in yard service was not available to act as a lookout full time. There is no question of that. At the very least he necessarily had to spend part of his time attending to his firing duties.

The third fact is that the yard diesel provides in the side steps --

THE CHAIRMAN: Provides what?

MR. SINCLAIR: In the side steps and platform at either end of the locomotive a completely safe place for a yardman to station himself with unobstructed view in the direction of motion in contrast to the situation on a steam locomotive. That is the only point of the three I have mentioned where I think there would be any question at all and that statement is found in the evidence of Mr. Shepp, volume 4, page 473. Then, of course, the Commission has made its own observations.

It is my submission that the improvement in the engineman's view on a diesel locomotive makes unnecessary even the limited assistance the fireman was able to give him in lookout duties on steam locomotives.

THE CHAIRMAN: Well, just in connection with that last matter about these steps, you are going to develop it as to when and when not the yardman will or will not be there?

MR. SINCLAIR: I am going to go into that in detail in my submissions.

THE CHAIRMAN: All right.

MR. SINCLAIR: In my submission the evidence is clear that a locomotive in yard service can be operated safely and efficiently without a fireman.

Dealing first with the matter of efficiency, there is some suggestion in the evidence of Brotherhood witnesses that if firemen were removed from yard diesels there would be delays in yard operations caused by the engineman having to wait for a member of the ground crew coming up to position himself on the engine and in this way the efficiency of those operations would be affected.

In answer to this suggestion, however, there is the positive evidence of the officers, who have supervision of the company's principal yards that if firemen are removed no additional assignments will be required in those yards.

Mr. Lefrancois referring to the Montreal terminal expressed the opinion that no additional assignments would be needed if firement were removed from yard diesels and that no more men would be needed.

That is in Volume 11, at page 1379.

Mr. Alver stated that if firemen were removed from all diesel yard engines in the Toronto terminals no additional assignments would be necessary, nor would it be

necessary to add any more yard men.

That is at Volume 15, page 1973.

Mr. Kelley expressed the opinion that the work would not be slowed up by the removal of firemen from yard diesels and that additional assignments would not be required in the Winnipeg yards or in the Calgary yards.

Mr. Kelley's evidence on that point is at Volume 12, page 1604, and Volume 13, pages 1632 and 1633.

Mr. Shepp stated that if firemen were removed from yard diesels in the Calgary and Vancouver yards, no additional engine assignments would be required to carry out the work done there.

That is in Volume 3, page 415.

Furthermore, Mr. Shepp pointed out that the additional time that might be taken by having a yardman position himself on the front of an engine when that is necessary would be offset by the saving in time which would result by having the yardman ride on the front of the engine to the switch, rather than walk to the switch when necessary to line it. That is to say, what you lose on the swings, you gain on the roundabouts.

THE CHAIRMAN: Well, I didn't get that about the swings and the roundabouts. Would you put that again?

MR. SINCLAIR: That is to say, what you lose on swings, you gain on the roundabouts, that is, having the yardman walk up to ride on the front of the engine when that is necessary would be offset by having the yardman ride up to the switch rather than walk up when it was found that the switch had to be lined or protected in some way for the movement.

Mr. Shepp's evidence was that if you were on the front of the engine you would be in position to look after it. Now, if the switch was not lined you would have to stop while the fellow walked up rather than rode and, of course, you ride up a little faster than you walk.

THE CHAIRMAN: Is that done now?

MR. SINCLAIR: In some cases the evidence shows that it is done. In other cases it shows that it is not being done that way.

THE CHAIRMAN: I am not sure that I just visualize that picture too well.

MR. SINCLAIR: Well, my lord, let me put it this way: the engine is working in a yard track coupling up and the men are working behind it. The car is attached to the cab, the three of them are back, they get finished what they are doing and they are going to pull out of that yard back

onto the lead and go back down the lead and onto another track. Sometimes, the evidence shows, today under those circumstances the engine follower will walk up, may ride back of the diesel, in other cases he may ride the front of the diesel. In other cases he won't walk up at all, he may cut across, let the engine go out by itself with the cars onto the lead.

Now, if when they get out of --

THE CHAIRMAN: If he does that who throws the switch?

MR. SINCLAIR: That is the point. If he does that and the switch is not lined or if there is anything to be done when they get out on the lead the engineman stops and the man has to walk up or walk over and the evidence is that in those cases where he now does not walk up when the engineman has not got an unobstructed view he is going to stop anyway so rather than have him walk up later he should then walk up first and the little delay that would be involved in him having to walk up to take a position where it was necessary for him to do it would be offset by the time that today he has got to walk up anyway. Summarized by what you lose on the swings you pick up on the roundabouts.

That is at Volume 3, page 408.

It is apparent from this evidence that if there were no firemen on diesels in yard operations these small delays would be offset and the work would be done without extra assignments.

Now, on the other hand, the evidence clearly indicates that the safety of yard operations -- and when you are looking at safety you look at efficiency too-- would be improved if, instead of relying on the fireman acting as a lookout whenever the engineman is unable to get a clear view of the track ahead, a member of the ground crew takes a position where he has an unobstructed view.

As the Commission has observed when you move an engine ahead even the engineman and the fireman together have not got as good a view as a yardman on the front of the diesel himself. That is a pure question of geometry and it is just as simple as that.

Now, throughout these proceedings, throughout the observations of the Commission it has been clearly apparent that the safety of yard operations depends very largely on the ground crews positioning themselves properly. Yard locomotives are operated under the control of a ground crew generally. There are some exceptions to

this but generally it consists of an engine follower and fieldman and a yard foreman. The movements of the locomotive are directed by this ground crew and it is their responsibility, the ground crew's responsibility, to ensure that the locomotive does not move unless it can do so safely just as it is the engineman's responsibility equally not to move unless he has got a signal or unless he can satisfy himself that it is safe to go forward or backward.

Now, unless the engineman has a clear view ahead or behind, a member of the crew should be in position, said Mr. Alver in front of the engine in the direction of movement to keep a lookout for the engineman.

Alver said that at Volume 15, and he dealt with it further in quite a number of questions running from page 2003 to 2007.

When a yard diesel, is moving cab ahead of him, that is, backing up, moving cab forward, the engineman has, of course, a clear view, a panoramic view, there is nothing in his way. He has a large glass window at the rear of the locomotive and in such case it is not necessary for a member of the ground crew to be on the point of the engine or on the leading steps moving cab first.

The engineman can see for himself

whether he can move in that direction safely and he does not require either a fireman or a member of the ground crew to assist him to carry out his duty. And that applies, in my submission, even if he is receiving signals from a member of the ground crew in the direction opposite to the direction of the movement. His duty still is to keep a lookout ahead and in practice he could very easily do so without relying on the fireman. It was demonstrated that time and time again a man could take a signal, turn his head and make adequate lookout.

Now, when you are moving engine ahead -- Alver dealt with this that I have been talking about at Volume 15 at pages 1988 and 1994.

Now, when you have a yard diesel moving engine ahead, what we call going forward, in a case where there is curvature to the left and the engineman has not got a sufficient view in the direction in which he is proceeding, a member of the ground crew should so position himself to act as a lookout for that movement. Now, he may either stand on the steps in front of the locomotive on the engineman's side, he can position himself on the ground in advance of the movement at the switch and bring him down. He can even on occasion

be on top of a car and get a view and have the engineman watch him.

THE CHAIRMAN: Is there any specific rule?

MR. SINCLAIR: No, my lord, except the one rule that you must conduct yourself safely and take the safe course.

THE CHAIRMAN: You say that is what the yard crew are there for?

MR. SINCLAIR: That is right, that is what they are employed to do.

HON. MR. McLAURIN: The other rule is to stop if the engineman is out of sight.

MR. SINCLAIR: That is the other rule, if he cannot see. That rule, we have been a little loose with the use of that rule, if I may suggest so. That is 7A. You see, the way that rule reads, it says:

"Signals must be given from a point where they can be plainly seen and in such a manner that they cannot be misunderstood."

HON. MR. McLAURIN: What page is that?

MR. SINCLAIR: Page 15 of Exhibit 27. So that the engineman has a complete answer. If he has any doubt at all, if there is any doubt he stops and immediately he stops the ground crew

men say, "You can now go forward." The engineman has an opportunity to bring the locomotive to a stop when he is ever in doubt and say to the ground crew, "From here on it is yours, I must have assistance."

Now, the yardman is there for the purpose of warning the engineman of the dangers that the engineman cannot see himself and, as I have said, when he is properly positioned on the ground, on the engine or a car he is better than the fireman and the engineman put together, that is, where the engineman has not got a panoramic view. That was the opinion of Alver. He said that at Volume 15, page 2007. The fireman is in a better position, said Mr. Alver (in summary), to warn the engineman of dangers than the fireman back in the cab with the engineman.

MR. LEWIS: You mean the yardman. I think you said the fireman.

MR. SINCLAIR: He is better than the fireman back on the cab of the engine.

Therefore, when the diesel is moving cab ahead the fireman is not required as a lookout because the engineman himself has a full view of the track ahead. When a yard diesel is moving engine ahead, the fireman is not required

to act as a lookout because a member of the ground crew, if properly positioned -- and it is not every case that is necessary -- should so position himself as to act as lookout in cases where the engineman's lookout requires to be supplemented and he should be in a position where he can completely meet any deficiency of the engineman.

In either case, cab ahead or engine ahead, the duties of the fireman as a lookout are a duplication of the duties of the engineman or of the duties of a member of the ground crew.

THE CHAIRMAN: I am not sure I follow you, Mr. Sinclair. Would you say there are some cases where the yardman should be in the cab?

MR. SINCLAIR: No, I said, sir, in some cases -- and it is not in every case -- when you are moving engine ahead that the yardman has to come up. We work on a lead of tangent track, the switch is closed, we are going to stay in there, we are moving back and forth. We know where we stand. The engineman knows where he stands and the only person that should come into trouble is somebody walking into the side of the movement from the left side and he has got a duty to expect moving

cars in the yard at any time and cars are kicked in yards with nobody on them in cuts of one, two, five, eight. And steam engines are moving around and have moved around kicking those cars in conditions that are much more dangerous than they have been since they have gone out of yards largely and since the lighting has come along according to the evidence.

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One point I want to make is that, where necessary, the ground crew can come forward and position themselves on the point of the engine, on the engineman's side and have a complete and unobstructed view, and this supplements and more than takes care of any responsibility the engineman may have. I do not want the Commission to think that on every move, engine ahead, a yardman should be at that point because, in some instances and circumstances, it is not necessary. The Commission saw that in Europe. Sometimes the ground crew would come up and at other times they would not come up when they were moving engine ahead, that is in operations without firemen on diesels in yards.

Mr. Gonder said what I said, that in either case, the duties of a fireman as a lookout are a duplication of the duties of the engineman or of the duties of a member of the ground crew. Mr. Gonder deals with that in Volume 30, between pages 4221 and 4225.

Now, Mr. Chairman and members of the Commission, there is evidence that enginemen have relied on firemen to act as a lookout on the left side of the cab of diesels in yard service when they should not have done so. The brotherhood witness Colpitts stated in his direct examination that when he, as an engineman, is receiving signals from members of the ground

crew in direction opposite to the direction of his movement, he relies on the fireman to keep a lookout in the direction of the movement. That was his evidence, and it is in Volume 43, pages 6072 to 6073. In cross-examination Colpitts admitted that, as an engineer, he could not delegate his duty, himself, as imposed on the engineer in the seventh paragraph of Rule 104 to see that switches are properly lined for his route.

THE CHAIRMAN: Just a minute, what rule is that?

MR. SINCLAIR: The seventh paragraph of Rule 104, Exhibit 27, that is to see that the switches are properly lined on his route. Colpitts admitted that at pages 6089 and 6095 of Volume 43. There is no way he can delegate that duty, that is his duty to see that the route is lined for the engine. He must see, and he cannot delegate it. He may rely, but he cannot delegate, but if he is relying, he cannot delegate, and in my respectful submission he has to carry out his duty. There can be no doubt that the proper practice and, under the rules, the required practice, is for the engineman to keep a lookout himself in the direction of the movement. There is no doubt that he can do this when switching and taking signals from behind by turning his head, as I have said earlier, and as Mr. Alver said at Volume 15, page 1994.

There were practical demonstrations of this point given by enginemen working without firemen to the Commission during their European observations. I recall to the Commission, in particular, when it was riding the diesel switcher in a difficult switching area at the St. Pancras goods yard in London, England. The engineman watched his ground crew for signals and still made the necessary observations in the direction of movement when backing up. The Commission will recall that fact, and Mr. Justice Kellock and Mr. Justice Martineau were in the engine.

THE CHAIRMAN: What yard was that?

MR. SINCLAIR: The St. Pancras.

When an engineman relies, as Colpitts claims he does, on his fireman to act as a lookout in the direction of movement, he is following a practice which is not only improper, but in my submission, it is unsafe.

HON. MR. McLAURIN: To which paragraph of Rule 104 were you referring?

MR. SINCLAIR: The seventh paragraph, which reads:

"A train or engine must not
~~follow~~^{follow} a track until switches connected with the movement are properly lined, or in the case of spring switches the conflicting route is seen to be clear."

HON. MR. McLAURIN: That does not put it on the engineman exclusively.

MR. SINCLAIR: He has to see it, sir. He is subject to the rules and he must see. You do not see, in my respectful submission, unless you have transferred the control of the movement to the ground crew, then it is they who must see. He cannot transfer control of the movement to the fireman.

HON. MR. McLAURIN: Just look at the preceding paragraph. Do you not read them both together for context?

MR. SINCLAIR: That reads:

"When a train or engine is standing on any track waiting for a train the engine crew and trainman must, when practicable, see that the switches at the front of the engine are properly lined."

HON. MR. McLAURIN: Is not the engine crew the fireman and the engineman?

MR. SINCLAIR: Yes, but I am saying you cannot, when you have a positive duty yourself to see, in control of the movement, you cannot delegate it to somebody else. There is a joint responsibility throughout these rules. There is no argument about that.

HON. MR. McLAURIN: That could be argued against you, that the fireman is part of the engine crew.

MR. SINCLAIR: I admit that the rules place a responsibility on anybody in the engine to observe. They must do that. The point I am making is that the engineman is responsible for operating the engine and when he is required to see, he cannot delegate that to somebody else; somebody else can be a check. The only way he can get out of his responsibility is to say, "I am under control of you, the ground crew, and I am working on your signals rather than on what I can see."

THE CHAIRMAN: Take paragraph 6 on that page, does the presence of the word "trainman", indicate that the reference is to a road movement and not a yard movement?

MR. SINCLAIR: Well, Mr. Chairman, a trainman is not used except for road movements, all right. I would not argue, though, and I do not intend to argue that a fireman on a yard diesel has not got a responsibility under the rules to make observations; that is not my point. My point is that he has, but I am saying that the engineman cannot delegate his control of the locomotive.

THE CHAIRMAN: Even if the fireman does or does not see, the engineer must see..

MR. SINCLAIR: Or transfer control to the ground, and then he is working on signals and he is protected by the rule. At page 6095 of Volume 43, Mr. Colpitts was asked a number

of questions and perhaps I should read a few of them. This a question by the Chairman:

"Q. Mr. Colpitts, you were not asked about any particular geographical location at the moment. You were asked to read the rule and give your understanding of the duty, if any, that it imposes on you as an engineer. That is the question.

A. It means that you will not go into territory where the switches are not properly lined for your route.

Q. That is, that the engineman will not do that without seeing that for himself?

A. For himself, yes.

Q. That is what you understand?

A. Yes."

We were discussing that, and you will recall that the movement was cab first in this section of the transcript. Then, we went on to deal with delegation and relying, immediately following that.

THE CHAIRMAN: Well, I suppose, to come back to Rule 104, you were looking at it from the standpoint that there is no fireman; then the engineer has got to see.

MR. SINCLAIR: That is right, or have the ground crew see.

HON. MR. McLAURIN: He does not have to see. He could rely on a proper signal from a member of the ground crew who are acting as his eyes.

MR. SINCLAIR: That is what I say; he either transfers control, and then he is working on signals only or he takes it himself. But if he takes it without signals, he accepts the full responsibility and must stop if he is in doubt.

THE CHAIRMAN: You went on to deal with it from the standpoint of the present situation; where there is a fireman, that is something else.

MR. SINCLAIR: Yes, I said there that there was a joint responsibility.

HON. MR. McLAURIN: Is it safe, at any time, even if he can see, to move the train without a signal?

MR. SINCLAIR: Oh, yes.

HON. MR. McLAURIN: What about the position of the ground crew? Isn't he in danger of them being in trouble if he takes it upon himself to move the locomotive?

MR. SINCLAIR: I think there is quite a bit of evidence on that. I think Mr. White, in Calgary, gave a couple of instances which I shall discuss, to demonstrate that the ground crew will look after each other. They do not give a signal to proceed unless, as Mr.

White said, it was his practice to know where his mates were.

HON. MR. McLAURIN: But I understood you to suggest that there are occasions when the engineman, being able to see, could move without any signal.

X MR. SINCLAIR: Well, he gets a signal to start, but then he can go on following his own view. He gets a signal to start the movement. He now knows he is going out onto a lead, and we will say he is going cab first; he has got everything before him. He can see the switches, he can see the track, he can see the lead, he can see everything. If the switches are in position where he cannot see, he cannot proceed until he has a signal.

HON. MR. McLAURIN: Then, for an engineer to do the proper thing you do not have to play around with rule 104, because it is in the general rule. If he can do it with real safety, then the general rule covers the whole picture so far as his responsibility is concerned.

MR. SINCLAIR: It is overriding.

HON. MR. McLAURIN: It is one of those examples about being general and comprehensive and you do not get into trouble by being specific.

MR. SINCLAIR: I think sometimes you get so general you cover a lot and it helps to

investigate it more finely. But I do agree that, safety being the first consideration in any railway operation, that cardinal, overriding rule is the number one rule. I certainly agree with that.

THE CHAIRMAN: Perhaps it is so close to adjournment time that we could adjourn now.

The Commission adjourned at 12:30 until 2:00 p.m.

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Monday,

October 28, 1957.

AFTERNOON SESSION

--- The Commission resumed at 2.00 p.m.

MR. SINCLAIR: Mr. Chairman and gentlemen, just before the luncheon recess I was making this point and dealing with Engineman Colpitts. Colpitts said that when he was moving cab first he would not look, he would rely on the fireman to look. I submit that that is an improper practice, when an engineman can see if he looks and does not look, when he delegates to someone else his duty to see where he is going. Where he cannot see then of course he has to take other action.

It is the second point, where he cannot see. For instance, as I said earlier, there is evidence here that the fireman was being relied on in this circumstance. There was a curve to the left where the engineman could not see when he was moving with the engine ahead and he was relying on the fireman rather than waiting for the ground crew to come up and get in position where they could see in the direction of the movement.

The practice of enginemen relying on the fireman to keep a lookout instead of either keeping a lookout themselves or relying on their ground crew, waiting until the ground crew is in position, or watching the ground crew when they are in position, is the direct cause in my submission

of a number, indeed many of the incidents in yard service about which evidence was given by Brotherhood witnesses. When I come to that part I shall deal with that specifically.

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The Commission will recall that there were a number of incidents in which, according to Brotherhood witnesses, it was claimed that the firemen had averted accidents, when the engineman was moving cab ahead without keeping a lookout himself. In a number of others the engineman was moving engine ahead without a sufficient view of the track and with no member of the ground crew in position on the front of the engine.

There have been many instances referred to in the evidence and I should like now to review them as briefly as possible, dealing first with the ones involving diesels in yard service in this section of my summation. In each of these incidents it was the suggestion of the witness that if the fireman had not been in the cab to warn the engineman of some danger an accident would have occurred or, at least, more damage would have resulted.

Fireman Post described an incident which occurred in February, 1957 in the following way: Post was on a yard diesel switching at MacKay Smelters in the Ottawa yards. While spotting a car a member of the yard crew, Dupuis, moved over to the fireman's side and as he was instructing another member of the yard

crew as to completing the spot he lost his footing on the ice and slipped under a car. Post yelled to the engineman, who stopped the engine before Dupuis was injured. The evidence of Post will be found at Volume 38, pages 5366-68.

The facts concerning this incident as developed by the Company's investigation do not bear out the suggestion that Fireman Post's presence averted an accident. The facts are that Yardman Larkin was watching his mate Dupuis and saw him slip and immediately gave Engineman Hammill a stop signal. This was done even before Dupuis yelled to Larkin. Hammill, the engineman, was watching Larkin, as he should have been, and stopped the movement on Larkin's signal. Undoubtedly Post saw the incident and no doubt yelled. He was on the alert, but if he had not been there or even if he had done nothing, even if he had not been alert, the result would have been the same as it was, Dupuis would not have been hurt, as he was not hurt.

THE CHAIRMAN: What would be your submission supposing nobody but Post had seen him?

MR. SINCLAIR: My submission would have to depend on the particular facts.

THE CHAIRMAN: Just leave out the fact that the other yardman saw Dupuis fall.

MR. SINCLAIR: Well, under those circumstances my view is that the other yardman should have had him in vision, he should have been watching.

That was his duty in regard to his mate. Under those particular circumstances when he was going into a confined space, knowing the situation and knowing the conditions. He had to keep the entire movement under control, having in mind that he knew where his mate was going.

THE CHAIRMAN: Supposing he knew where he was going but just did not happen to see him slip?

MR. SINCLAIR: He should have been, I submit, in those circumstances in the position where he would have kept him in view, as he did keep him in view.

Harris dealt with this at Volume 61, pages 8693-8699; and pages 8732-8737, and the particular exhibits are Exhibits 351, 352 and 353.

Post also described an incident in the Ottawa yards involving some small children who came on the track at the Dominion Bridge siding. A lad of about five years of age was running alongside of the engine holding on to the steps and Post called to the engineman to stop while he chased the lad away. I do not think Post intended to suggest he averted an accident on this occasion. What he did was chase an infant trespasser off the property. Post's evidence will be found at Volume 38, pages 5368-5370.

There might in the future have been an accident, we do not know, but there was no situation that was what I would call emergent in

the light of the facts as presented. There was an infant trespasser in that position and Post chased him away.

Fireman Blackburn gave evidence about an incident which occurred on March 7, 1957, with a road switcher being used in yard service at the River yard, Ottawa. The engine was starting to move ahead with the engineer looking behind for signals from the ground crew when Blackburn called to him to stop because of sectionmen who were on the track in front of the diesel. Blackburn's evidence will be found at Volume 38, pages 5413-5418.

The Company's evidence on that matter is that they have been unable through investigation to determine whether this incident did in fact take place. Mr. Harris said that all of the sectionmen and extra gang men had been contacted and none of them recalled the incident. Engineman Gale, who Blackburn said was on the engine with him, has stated that he does not recall this incident nor does he recall Fireman Blackburn shouting "Whoa". The first time he actually heard of it was when he read it in the Ottawa paper and he did not know he was the engineman involved until he was informed by the Superintendent conducting the investigation. Harris' evidence will be found at Volume 61, pages 8702-8706, and 8724-8727, and the exhibit is Exhibit 355.

If this incident did take place it

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is clearly a case where the engineman himself should have looked ahead before moving, and if he did not do so, he was no doubt relying on the fact that there was a fireman on the engine which, of course, is not a safe practice. If there had been no

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firemen there the engineman undoubtedly would have looked before he started to move and if a sectionman had been there he would have seen him.

Fireman Blackburn admitted on cross-examination that section gangs have a watchman who protects them in doing their work against movements in the yard. He further admitted that before a movement is made by a yard engine the bell is rung so that attention will be attracted to the fact that the engine is to move. I think that in that situation, with a guard appointed, with that duty on the engineman, it is properly and completely looked after, if people carry out their duties. Blackburn's evidence will be found in Volume 38, pages 5417-5418.

Fireman Sloan described an incident on February 21, 1957, when returning on a yard job from Hull. As the yard diesel with engine ahead approached a crossing equipped with gates Sloan warned the engineman to stop because the gates were not lowered. He said that the engineer applied the brakes in emergency. The engine follower in that case was standing on the front steps on the left side of the diesel instead of the engineman's side where he should have been. Sloan stated the engine follower gave no signal to stop. His evidence

will be found in Volume 39, pages 5436-5440, and pages 5465-5483.

Assuming Sloan's recollection of the incident was correct, if there had been no fireman the yardman would have had to take up his proper position on the steps on the engineman's side of the diesel, and not where he was at the front of the engine, over on the left side. Assuming that Sloan's recollection of the facts is right, he would have had complete control of the situation. Being over on the right-hand side he would have had complete vision and be directly in contact with the engineman. That was the proper place for him to be.

The Company investigated this incident. Engine follower Sauve stated that he gave the fireman a stop signal when he saw cars approaching the crossing. Engineman Monaghan said that he could see that the gates were not lowered, but that the gate man intentionally leaves the gates open as long as possible due to the heavy traffic over the crossing. When the engineman saw the car, that is the automobile, move over the crossing, he needed no signal nor any warning. He automatically stopped working power and the movement stopped within a few feet. Engineman Monaghan states he did not apply the brakes in emergency and there was no need for such an application. Both the engineman and engine follower, according to Mr. Harris who conducted the investigation, showed genuine astonishment in

Sloan's statement to the effect that an accident was narrowly avoided. Harris' evidence will be found at Volume 61, pages 8706-8713; and pages 8722-8723, the exhibits being Exhibits 356 and 357.

THE CHAIRMAN: Mr. Sinclair, I am just wondering how we should proceed. Supposing you take any one of these isolated incidents and suppose we were trying that incident in the sense of trying to ascertain the facts and we come to one conclusion on the facts rather than another, that somebody other than the fireman was either before or at the same time as the fireman able to see that, or that the fireman saw it first.

I do not want to interfere with your argument at all, but I am just wondering where you are going. Is it necessary to consider all these incidents, or will Mr. Lewis not be able to say, "Well, regardless of the facts of any particular incident or incidents, you cannot rule out the possibility that if a fireman were there under such circumstances, an accident might have been averted and therefore he should be retained. If that is what the argument comes down to, do you advance matters by analysing the facts of all these incidents?

MR. SINCLAIR: He went to the trouble of calling evidence on numerous specific incidents and I thought in the light of that that they could not be met by a general sweeping statement without support by an analysis of the incidents that he took the trouble to call the attention of the

Commission to. It would only be a broad, general statement of counsel and I did not think it would carry much weight.

I think those instances were brought here to show the Commission that they felt that the fireman did avert accidents. They are specific about it.

All the Commission can do is to look at these facts and the analysis of those facts as they are before the Commission and draw a conclusion which is specific. That would be my submission.

I submit that each of these instances ought to be looked at and analysed to see whether they have come up with anything of real weight to show that firemen are required. That is why I think they should be analysed.

THE CHAIRMAN: That is the way you put it?

MR. SINCLAIR: Yes.

THE CHAIRMAN: All right.

MR. SINCLAIR: The second incident described by Sloan occurred on February 23, 1957, while going over the diamond leading to Aylmer with a diesel moving engine ahead pulling about five cars. Fireman Sloan warned the engineman to stop when a boy on skis at the side of the track decided to cross over in front of the engine as it was moving slowly forward. The engine stopped about half a car length from the boy. The engine follower in that case had remained at the switch

when the engine moved forward and the other two members of the ground crew were also behind the engine. Sloan's evidence will be found at Volume 39, pages 5440-5445, and pages 5483-5491.

The engineer said that there was no such boy. Mr. Harris talked to the agent, the assistant agent, the members of the crew, to everybody who would have been in that neighbourhood and as far as he could find there was no one who could recall the incident. I submit that if a boy on skis was on company property alongside a track in the yard and had come very close to being hurt, all of these people either would have seen the boy or heard about it.

On the likely facts, although I cannot establish them, I think it is a reasonable statement to make, a reasonable conclusion to draw, that there may have been a boy, that he may have fallen, but that he was not in a position of danger. Sloan may have honestly believed that this boy was in danger, but the people who have a better control of the situation, who had a better sight of the situation, determined in their own minds that there was nothing to it and therefore it did not register. I think that is a fair conclusion to draw from the evidence that is before the Commission. Harris' evidence will be found at Volume 61, pages 8713-8716, and pages 8717-8721, and the exhibit is Exhibit 358.

Mr. Sloan gave evidence of a third incident. This is the one where the yardman gave a wrong signal to an enginemen when a switch was not properly lined. Sloan stopped the movement. He claimed that if he had not done so the switch would have been run through, probably to the extent of putting the engine off the track. Superintendent Harris said that the engine would not have derailed and the result would have been an insignificant amount of damage to the switch.

I think there is something to be drawn from that. The fireman's union went to the lengths they did to draw the attention of the Commission to an insignificant matter such as this, and I think that is of some moment. Mind you, switches being run through under certain circumstances are more serious than this one, but this is the one they picked from, as I say, the thousands of firemen looking for them.

Sloan volume 39, pages 5445-5449; and pages 5491 to 5493; Harris, volume 61, pages 8739 to 8740.

Engineman Stewart described an incident which occurred on the Swansea transfer at Toronto on July 17, 1956, when he, as engineer of the yard diesel, was moving engine ahead pushing eight or nine

cars. The engine follower, who was on the first car ahead of the engine, was signalling to Stewart to go ahead when the fireman hollered at him to stop because he could see that the switch was not lined. Stewart said that a few seconds later he received a stop signal from the engine follower. Two members of the ground crew were on the point of the movement. Here is the situation, with an engine pushing cars, one man signalling direct to the engineer on the car in front of the engine and the other two men being on the point. The fireman hollers. A few seconds later a stop signal comes from the point of the movement to the engine follower and to the engineman.

Stewart, volume 41 pages 5694-5697; 5825-5827.

My comment on that is that it would seem the engine follower gave the stop signal only a few seconds after the fireman called to Stewart to stop which shows that the members of the yard crew at the point of the movement were in control of the situation. They saw it and they gave a signal when it was time to give it, but the fireman, not having as good a view as they, saw something and called in advance of that. Now, if he were eight cars away he could not possibly have had as good a view of the movement as the

men on the point.

Stewart described another incident which occurred about a week later on the same Swansea transfer when he was moving engine ahead with a light yard engine, that is running light. He received a proceed signal from the engine follower who was ahead at the switch when he was warned to stop by the same fireman because of a movement coming out of a track from the left hand side. The engine follower could have seen the movement as well as the fireman and Stewart did not know why he did not see the conflicting movement.

Stewart volume 41 pages 5697-5698.

My submission on that is this. If an incident such as this is support for the view that an extra man should be available to act when a member of the yard crew who is supposed to keep a lookout, and is in a position to do so, fails to keep a lookout, then it is support for having at least two men for every job in the railway. This, I submit, cannot be reasonably supported, but it is the essence of many of these incidents, in my respectful submission.

THE CHAIRMAN: Well, I was just wondering if some such principle as that could not be stated, rather than that you have to analyze each incident. I am

not suggesting you should not. I suppose, ultimately, when you finish analyzing these incidents you have to come to some principle.

MR. SINCLAIR: That is right, but I am completely in the Commission's hands.

THE CHAIRMAN: No, no, Mr. Sinclair. I want you to go right ahead the way you are, unless you think anything that is suggested to you from up here should dictate another course. Do not be influenced, that is all.

MR. SINCLAIR: When I take these incidents, and the analysis I will make of them, will show in my respectful submission -- I do not want to be unfair -- I think they show the fireman's union was hard-driven, if I may use that phrase, to find incidents that would support the position that firemen were required to be on the engine to maintain a lookout or that the firemen did, in and of himself, avert an accident or that if the fireman was not on there an accident would have resulted. As I say again, in view of so much time being taken, I thought it would be of assistance to deal with them and give the Commission my views on them. I am sorry to take so much time.

THE CHAIRMAN: Go ahead, Mr. Sinclair.

MR. SINCLAIR: Stewart described an incident which occurred at the east end of Keating Street yard at Toronto at the end of 1956. At that time, he said he was on a yard engine which was headed west with cars on its nose and was pushing these cars into track four on signals from the engine follower at the switch. It was at night and apparently the engine follower was receiving signals from the field man. In this case, the field man's lamp went out and the engine follower failed to give a stop signal, as required under rule 7 (a). Instead, Stewart was **told to stop by the** fireman who received the signal on his side from the yard foreman. Stewart stated that the yard foreman could not get in the position to pass a signal through the engine follower because of the cars on the other tracks, but was unable to explain why he did not call to the engine follower who was only a **short** distance away instead of moving through a dangerous location to signal the fireman. Stewart's evidence is in volume 41, pages 5710 to 5715 and 5799 to 5808 and exhibit 210.

My submission is that the only reason why the fireman was used in this case was that the engine follower failed to stop the movement when he could and should

have done so, in accordance with the rule. Again, I do not think it could be suggested that a fireman was required as a lookout so as to be available if the person who is supposed to keep a lookout fails to do so. I think that the fact that the fireman was there caused the yard foreman to move through a dangerous location to pass a signal to the fireman when, if he was not there, he would have taken the safer course and called to the engine follower and had the signal relayed in that way. That would be my submission, and again it is the same as the other case Stewart spoke of, that is you cannot have one man following another man around just to see that the first man does his duty. You cannot have two men to do one duty.

Now, Stewart described an incident which occurred where the Lever Brothers spur comes into the Keating Street yard at Toronto. A car that was not properly tied down rolled out of the Lever Brothers track and cornered one of Stewart's cars at the switch. Stewart was warned to stop by the fireman who received the signal from the yard foreman. Just prior to the incident, signals were being given direct to Stewart and it is not clear why the yard foreman could not have passed the

stop signal to the members of the yard crew who were signalling to Stewart.

This is an incident, Mr. Chairman, where I submit that shifting from this side, giving signals to the engineman for one half of the movement and then going over half way through the movement and giving signals to the fireman, is quite a dangerous practice.

Stewart, volume 41, pages 5715 to 5720 and exhibit 210.

Engineer Colpitts described an incident which occurred when switching the ^{shed} "G-yard/tracks at Winnipeg. When backing on G-lead watching for signals from in front, his fireman warned him of a truck which was foul of the lead in the direction of his movement. This is simply a case of people not doing what they are supposed to do. If he had looked, as it was his duty to look, he would have seen the truck himself. As I say, when an engineman has a duty to see and could see if he looked and does not look, then he is doing something that is improper in delegating or attempting to delegate or relying on the fireman, when he himself could see if he looked. Again, if the fireman had not been there, he would undoubtedly have done so.

Colpitts, volume 42, pages 5981 to 5984 and exhibit 221

Then, McKinstry, a yard foreman, described an incident which occurred in April, 1957, at Calgary. In this case, it was a sectionman who pushed a car foul of the lead, and the fieldman on top of the car at the point of the movement relayed a stop signal to McKinstry who relayed it to the engine follower and he, in turn, to the fireman.

McKinstry, volume 42, pages 5894 to 5895.

My submission on that is that, if the signals were being given direct to the engineman at the time of the incident, as they should have been, the stop signal would have been given to the engineman direct instead of through the fireman. Again, if there were no fireman on the engine, the ground crew would have had to position themselves properly so as to relay the signal directly to the engineer.

Then, engineer Tucker described one incident in yard service which occurred at the Root Street yard at Chicago at the end of April, 1957. While the fireman was operating the engine pushing two cars down an incline on a left-hand curve, Tucker, from the fireman's side, saw that the first car had broken away. He warned the man

acting as engineman and the engine, with one car, escaped damage when the first car crashed the bumping post.

Tucker, volume 45, pages 6346 to 6347.

My submission on that, Mr. Chairman, and members of the Commission, is, from the facts given by Mr. Tucker, the ground crew could not see each other and were therefore improperly positioned. Indeed, the only interpretation open on the facts as given by Mr. Tucker is that the passenger cars were on this occasion being shoved blind. If the ground crew had been in their proper positions it would not have been necessary for Tucker to give his warnings. This is but another case of improper switching practice being followed because of the presence of the fireman who was being relied on, although it is not clear that even he was in a position to see the ground crew.

Then, Fireman Lancaster of the Santa Fe described an incident in yard service which occurred on September 27, 1950 when a yard diesel with eight cars sideswiped a departing freight train. In that case, neither the engineman nor the fireman on the yard diesel was keeping a proper lookout and both were removed from service.

Lancaster, volume 49, pages 6931 to 6940.

This incident, in my respectful submission, lends weight to the suggestion that this might well be an accident that was caused by a division of responsibility, each man on the engine at that time thinking the other man had a view when neither could do so. In any event, neither was keeping a proper lookout and the accident resulted.

Mr. Wade, who was called from Milwaukee by the Fireman's Union, gave evidence about two incidents which occurred in yard service in the United States. He, himself, was not involved in these incidents but obtained information about them in his capacity as general chairman.

Wade, volume 49, page 6980.

He referred to an incident which took place at Kansas City, Missouri, on March 28, 1957, when a yard diesel was approaching a crossing which was protected by a flagman. The fireman looked across and saw a car coming down the highway at a high rate of speed and hollered to the engineer to stop. It would appear that the car was coming from the right side of the locomotive because Mr. Wade said that if the engine had not stopped, the car would have struck the front steps about where one of the trainmen was riding and where the

engineman was said to be looking.

Wade, volume 49, pages 705⁴ to 7055.

My submission on that is that in this case, both the trainman and the engineman were in a better position to see the approaching car than the fireman, and it is difficult to believe that both of them failed to see it. They likely saw it, and felt that they were all right. The fireman has not got, in this case anyway, nearly as good a view as the engineman. The engineman was in a position to see the car. In any event, I do not think it could be seriously suggested that this type of incident supports the proposition that firemen are required on diesels to keep a proper lookout.

Mr. Wade referred also to another incident which occurred on February 25, 1956, at Racine, Wisconsin. This time the fireman warned the engineman of a car approaching from the ~~left~~ side, and the left side of the diesel hit the car and spun it around. According to Wade's opinion, if the diesel had not stopped when it did the accident would have been more serious.

Wade, volume 49, page 7056.

My submission on that is this. If no fireman had been on the diesel, a member of the yard crew would have been stationed in a

position at the front of the diesel as it went over the crossing where he would have been able to warn the engineman of the approaching car before the fireman had done so, and the chances are the accident would not have happened.

Then, Fireman Desbois gave evidence of an incident which occurred on April 2, 1957, while he was working in the Chapleau yard on an engine which was pushing a van and two cars. He said a member of the ground crew and the point of the movement went out of sight of the engineman. Desbois said he saw what he took to be a wash-out signal given by a member of the maintenance crew who were working in the vicinity and he called to the engineman to stop. The brakes were applied and the movement came to a stop, said Desbois, with the leading car two to three carlengths from the point where the gang was working.

Desbois, volume 55, pages 7847 to 7854.

The company's investigation has developed that Fireman Desbois was mistaken and there was no need for the movement to be stopped because it was under control of the yardman, who was in a better position to observe the head of the movement than Desbois. The only explanation that can be

given for Desbois' action is that he had mistaken a gesture by one of the extra gang as a wash-out. The fact is that as soon as the movement stopped the yardman signalled it to commence again. There is nothing in this incident to even suggest that the presence of a fireman averted an accident. All it did was interrupt unnecessarily an ordinary switching movement. In saying that, I do not wish to suggest that if Fireman Desbois was in doubt he should not have asked the movement to stop. The fact was, however, that there was no foundation for his doubt.

Haddow, volume 61, pages 8604 to 8609 and exhibits 346 and 347.

The next incident was described in the evidence of Fireman Scott and this occurred in the early morning of the first day of January, 1957 in Windsor Ontario. Scott said he was on a light-engine making a forward movement coming off the main lead. His engine had passed no. 1 switch but stopped foul of the lead while no. 2 switch was being lined. The yard foreman, instead of waiting until the engine was clear of the lead, lined no. 1 switch for a following yard engine. Fireman Scott saw the following yard engine coming into switch no. 1 and warned the engineman in time for him to step back from the cab just before the other engine sideswiped his engine taking the storm window off the window out of which he had been looking.

Scott -- volume 55 pages 7861-7874.

Now, here we have a violation of a rule by a yard foreman. It is the Rule 104 in which the yard foreman restores the switch to its normal condition before his diesel has cleared the main lead. This again is an example, in my submission that it could not be reasonably argued -- that a foreman is "required" -- I use the word in quotations -- to protect against an employee failing to carry out his duty properly.

I want to say this in another way than the way I expressed it before. If that were so there would be no end to such a sequence.

The next incident is told by yard foreman Lloyd. He read a brief describing two incidents, incidents which were related to him by members of his lodge. One occurred according to his information on May 23rd, 1957 when the fireman warned the engineman to stop for a man sleeping on the tracks with his feet across the rail on the fireman's side. The engine was light at the time and one of the members of the yard crew who were on the rear foot-board would, it is submitted, likely have been on the front of the engine if the fireman had not been there. In any event he was quite able to be there if it was necessary to have a lookout.

Lloyd, volume 56, pages 7910-7911.

Pages 7912-7916.

The other incident related by Fireman Lloyd as related to him by some members of his lodge occurred on May 30th, 1957 which, he said, was a very windy day. The fireman on that occasion, he said, warned the engineman of the yard engine --

MR. LEWIS: Yardman or yard engine?

MR. SINCLAIR: Took action to warn him of a yard engine with the man who was apparently with him standing foul of the rail.

Now, the member of the crew, one of the yard crew, was actually in the cab at that time. They were making a light movement. He got up into the cab rather than ride out where it was difficult on the windy day and in my submission he could have easily kept a lookout if one was necessary on the left hand side if he wanted to go up on the cab rather than ride out in front of the engine on account of the weather. There was no need for the fireman to be there to supplement the lookout. Lloyd's evidence is in volume 56, pages 7911-7912 and pages 7917-7918.

The next incident was related by Fireman Struthers and he referred to an incident in the Winnipeg yards on April 22nd, 1957. He said his yard engine was waiting to take some grain cars over the hump when the engineman received a signal from a member of the ground crew to proceed. Struthers saw there were some grain inspectors on the left side who still had their ladders against the cars and warned the engineman not

to proceed.

Struthers -- volume 56, pages 7936-7938.

Pages 7953-7954.

Now, on this occasion, Mr. Chairman, a member of the yard crew knew that grain inspectors were working on the cars. He had, according to Struthers, been watching for some time until they had finished their work. Apparently he thought they had finished but no explanation was given as to why, contrary to proper procedure, the cars were being switched before the grain inspectors had completed their work. .

Now, the procedure the Company has had in effect for ascertaining that grain inspectors have completed their work was described in evidence by Mr. McGinn. I submit that this procedure is all that can reasonably be required to protect grain inspectors, and a fireman is not "required" to see that others carry out their duties in accordance with established procedure.

McGinn -- volume 61, pages 8550-8555.

Pages 8581-8583.

Exhibit 341 also is of relevance on this bit of the evidence.

Struthers referred to another incident which occurred about a month previous to the time he gave evidence. It occurred

in the St. Boniface yards while switching cars at the cross-over and that location is shown in exhibit 227 and he said his engine stopped just about at the fouling point of the cross-over and the running lead when someone lined the switch for a handcar loaded with ties waiting to go down the running lead. Fireman Struthers noticed this and when the engineman was about to move, said he warned him not to go ahead.

He admitted in cross-examination that whoever had lined the switch for the handcar had no business doing so until the movement had been completed over the cross-over. That was the man's duty. Before lining the switch it was his duty to see it was done without a fouling. It also appears from his evidence that if the engineman had looked before starting the movement he could have seen the switch was lined against him.

Taking the facts as Struthers gave them the engineman could, if he had looked, made observation. Of course, the company made an investigation of this and they found that it was a Sunday job, they were unable to determine **that** this **incident** took place at the time and place that we have been given in evidence and engineer Pollock recalls Fireman ⁻~~S~~_truthers being on the job that Struthers says he was on that Sunday,

the only Sunday that Struthers had worked. Pollock says he has no recollection of the incident at all. The section foreman in charge of the section where the incident was alleged to have taken place was seen and the matter was run down as much as we could and I don't think -- and I am not suggesting there was not something of this nature happened but it did not happen on the day and on the shift Struthers said and so therefore we are unable to get at the facts but I am covered another way by saying, assuming the facts, the fireman cannot be said to be required, assuming the facts given by Struthers, the fireman cannot be said to have been required because the engineer could have seen if he had looked out, it was his duty to look and the only explanation that can be given in my opinion is he did not look because a fireman was there and he was relying on him wrongly. McGinn has given some evidence on this at volume 61, pages 8564-8571 while Struthers' evidence is at volume 56, pages 7939-7953.

Another incident, which Cody described occurred on April 12th, 1957 in the vicinity of Whittier Junction at Winnipeg. Cody said a yard diesel had backed into the Alsip Lumber Company spur. This is shown in exhibit 226, and tied on to some cars.

It began to proceed, to pull the cars out and was about to cross a road when Cody saw a truck come out from behind a building on to the right-of-way and called to the engineman to stop.

Fireman Cody, on cross-examination, said that his engine was headed west and that the engine was flagged over the crossing going in. That is, that it was going in engine head on, manually flagged over this crossing. When they were coming out over the crossing they were moving across it cab first. Now, the amazing thing about this is that he reversed his position of the engine condition between his evidence-in-chief and his evidence on cross-examination. Obviously, if the engine was going over the crossing headed west as it went in there was some reason for flagging it over the crossing and that is what Cody said they did but if it was going in cab first like he said when he gave evidence-in-chief there was no need to have anybody flag it over the crossing.

THE CHAIRMAN: Your are dealing still with yard engines?

MR. SINCLAIR: These are all dealing with yard engines, every one.

THE CHAIRMAN: There is no rule that comes under there?

MR. SINCLAIR: There is this rule in this case, my lord. I was going to refer to it later. We filed through Mr. Smith as an exhibit a copy of a bulletin that was put into effect in Yorkton as to how engines were to be taken over crossings when they were operated without a fireman. That was exhibit -- I was going to fit it in later but I can fit it in any time -- it is Exhibit 330.

That sets up the procedure where an engine is moving over a crossing where there is no fireman.

If I may go on with the second incident described by Cody, it occurred in the spring of 1956 at Rugby Junction, Winnipeg. His yard diesel was moving around a slight curve in the track. The engineer saw a man crossing over and was just asking Cody whether the man had got across when Cody saw the man and hollered for the engineer to stop.

Cody - Volume 57, pages 8023 - 8028.

The company's investigation showed that this incident was as Cody said in the sense that he was with engineman Pomeranski. Pomeranski said he remembered the incident and went on to say he saw Murphy -- the names check, that is the man that Cody talked about -- Pomeranski remembers the incident and says that he saw Murphy standing on the track in front of his light engine and when it was apparent to him that Murphy was not

going to step clear, he applied the brake and brought the engine to a stop and also sounded the whistle. Pomeranski states further that Murphy was in his view at all times. He also stated that Cody called his attention to Murphy standing on the track but he had already seen him before this.

Now, it seems to me in that incident Pomeranski was in control of the situation. No doubt Cody saw what he did, no doubt Cody called to the engineman but I submit, sir, there would not have been an incident if Cody had not been there. McGinn's evidence on this is found at Volume 61, pages 8559 - 8563 and in Exhibit 342.

Another incident is that described in Fort William by engineer Shaley who said this occurred on January 18, 1957, at Fort William when he was on an engine pulling twelve tank cars on the B.A. Oil assignment. As he approached the Duncan Street crossing, the fireman hollered a warning and he stopped. The diesel hit a car and shoved it into a snowbank, but the occupants were not injured. Two of the yard men were in the cab at that time discussing the switching list.

From the statements made by Shaley and his fireman at the time of the accident it seems doubtful that the fireman did in fact warn Shaley about the particular car

which was hit. In any event had there been no fireman on the diesel, it is obvious that one of the members of the yard crew would have been on the steps at the front of the diesel in a better position than the fireman to warn the engineman of the car.

In any event, I am not going to say this about very many witnesses but I think if the Commission will recall Shaley and his demeanour in the box I don't know how to -- really I don't want to be too strong about this, I will put it this way -- that he certainly was not impressive. Shaley's evidence was given in Volume 57, pages 8031-8041.

Now, engineman Duke read a brief. He also gave evidence of four incidents in yard service at Regina, the first three of which were described to him by members of his lodge.

The first occurred, he says, on May 1, 1957. A car was kicked into a track and it was alleged that the switchman who was riding the point of the succeeding movement did not notice that the car which had been kicked into the track was still moving and likely to foul the run-around track. The fireman, it was said, warned the engineer to stop and it was stated that the fireman's action averted a sideswipe.

Duke - Volume 58, page 8076.

pages 8083 - 8084.

The company has investigated this incident and found that the facts are not in accordance with the information which was given to Mr. Duke and which he related to the Commission. Although it may well be that fireman Maksymiak asked the engineman to stop, it was not this that averted the possibility of sideswipe. In fact, the two yardmen watched the car which had been kicked and when they observed it was not stopping, one yardman gave the engineman a stop signal which he acted upon. The yardman then went to the car and applied a hand brake, stopping it clear of the fouling point.

Mr. Smith gave evidence on this at Volume 60, pages 8500 - 8502.

The second incident Duke related occurred on May 4th, 1957, as it was told to him. A fireman warned the engineman too late to stop a sideswipe with Canadian National equipment and both the fireman and the engine follower, who was out of position, were disciplined.

Volume 58 - page 8077

page 8084

Now, this incident I dealt with in chief. I was surprised to hear it brought up by Mr. Duke in the way it was. Mr. Emerson had something to say about this incident (Volume 33, page 4686 and following)

and I will deal with it later because it is an exact example of the presence of a fireman not adding to safety but detracting from it.

The third incident related by Mr. Duke occurred on May 30th, 1957 and it is the same incident as related by fireman Lloyd at Volume 56, page 7911 - 7912; 7917 - 7918 and which I mentioned and discussed a few minutes ago. But on this incident Mr. Duke admitted under cross-examination one of the ground crew could quite properly have been in front of the engine in a position to keep a lookout.

Duke - Volume 58, page 8077, pages
8082 - 8083

The last incident referred to by Duke was on June 4, 1957, and in that case, he said, approaching Dewdney Avenue, Regina, he got a proceed signal from a switchman when the fireman warned him to stop because of a car and, according to Duke, an accident was thereby averted. Engineman Duke said that all three yardmen were on the front of his engine and that none of them signalled him to stop.

Duke - Volume 58, pages 8077 - 8078

The company investigated this matter and found that yard foreman Sutherland was riding on the front side step on engineman Duke's side. Sutherland stated that as they approached the crossing the other two yard men were standing on the front of the diesel.

Sutherland said he saw the Buick car coming and it was his opinion that the driver had seen the engine and had heard the whistle and would stop clear. For this reason he gave a proceed signal but as the car got closer to the crossing it increased its speed and swerved to the right. Here too is an example, I submit, of an engine coming up under control and having a motorist after having seen it take no action to beat it to the crossing. Sutherland says that when he saw the Buick car start to increase speed and swerve he gave a washout to Duke. The movement was stopped short of reaching the point where the Buick car passed over the crossing.

Smith - Volume 60, pages 8502 - 8505
pages 8532 - 8533

Now, my submission on that one, Mr. Chairman and members of the Commission, will be this, that Duke no doubt was called to by the fireman and he likely brought his head in and shut off but the man on the front of the movement that he should have been watching had the matter under control and did swing him down. I am not saying the fireman did anything that was improper, he saw the car coming, his assessment of it from where he saw was that they should stop then but there was a man in a better position and it was not until the car

increased its speed and started to swerve that he made an assessment that the man driving the car instead of operating the car reasonably was going to operate it in a way that would endanger himself and try to beat the engine to the crossing and he likely gave a stop signal as he said but Duke did not see it because the fireman had called to him and he had put his head in and made the application and shut off his throttle.

Now, yard foreman McGregor, filed a brief and gave evidence about an incident which occurred in the Lethbridge stock yards during the war. The fireman on a hand-fired steam engine warned the engineman of children who had crawled under the cars and had not been noticed by either McGregor who had walked along the cars before giving the back-up signal or by the fieldman who had gone down the top of the cars releasing the hand brakes.

McGregor - Volume 58, pages 8087 - 8093

As of this date the company has been unable to get the facts of this incident but I wish to make this submission on the question of infant trespassers. It is my submission on the matter of infant trespassers what the company can do is to warn them when it meets them, turn them away when it meets them and conduct campaigns in the school on safety and the dangers of being on railway property.

This the company has done, as was explained by Mr. Emerson in evidence.

In my respectful submission the responsibility for keeping infant trespassers off railway property is basically the responsibility of the parents. Certainly a fireman is not required to act as a guardian of infant trespassers on the few occasions that parents fail or that the safety programs of the company and others are not successful. I refer to the safety programs conducted by the Canadian Pacific in schools and by those who worry about children.

THE CHAIRMAN: Is it part of the railway's obligation to conduct such campaigns in schools or elsewhere?

MR. SINCLAIR: They would have no obligation. Their duty to infant trespassers is clear. They owe them no duty until they see them, and then they are not to maliciously injure them or act in a careless or wanton disregard of their known presence.

But the company has gone further than that and has conducted these campaigns in the schools. As Mr. Emerson has said, they have done a lot to try to make young school children and parents realize the danger.

THE CHAIRMAN: I was not asking about what they do, it was what they felt they should do.

MR. SINCLAIR: There is no obligation on them, in my respectful submission.

Fireman Mohr described an incident which occurred when he was working on an oil-burning steam engine in the Moose Jaw yard. The engine was proceeding light on the westward traffic track when he noticed a switchman walking too close to his track and advised the engineman to slow down and later hollered to him to stop. As the engine stopped it hit the man and knocked him down. This time, said Mohr, all the ground crew were riding on the back footboard. Mohr's evidence will be found at Volume 58, pages 8138-8141.

As was explained in evidence, a steam engine has no side steps so that the yardmen on that kind of engine could not have been on the point except by being on the leading footboard, which under the safety rules is a position that they should not be in. But if it was a diesel then the situation changes and they could have been there, any one, two or three of them.

My submission is that they would then be in a position where they could have

likely hollered at the man. It is not unreasonable to suggest that. Then there would have been no accident at all.

If they had been in the normal position with a light engine going down the track, the three men, instead of being on the rear footboard, one or more than one could have been on the leading steps and they could have seen that the man was foul and have called to him to skin his eyes or they could have swung the engineman down.

The next incident was described by Fireman Miller, and this occurred on March 18, 1957, while he was working on a coach job at the Calgary station. He was on a light engine which was proceeding on the express track with a fence on his side of the track. One of three men on the fence jumped down off the fence onto the track in front of the engine without noticing the engine. Miller called to the engineman to stop and the man was not hit. Miller's evidence will be found in Volume 58, pages 8161-8165.

In cross-examination Miller admitted that one of the ground crew could have ridden on the light engine. My submission is that undoubtedly one of them would have done so if there had been no fireman and would have been in position to

warn the engineman.

The next incident was related by Fireman Culver who referred to an incident which occurred on February 17, 1957, in the Lethbridge yard while he was working on a yard diesel. Culver said that a member of another ground crew switching on the next track stepped in front of the light engine on which he was riding. Culver immediately hollered to the engineer to stop and the man was not hit. The ground crew was riding on the back footboard of the diesel at the time. Culver's evidence will be found at Volume 58, pages 8171-8174.

My submission is the same as what I made in the preceding case. If the fireman had not been there the ground crew would have been in position on the front of the engine.

The next incident was referred to by Fireman Cunningham. This was in the Calgary yard on October 10, 1956. Cunningham was on an engine which had brought a train up to the hump and was waiting for orders to start humping when he saw some cars moving on a track in N yard. He thought these might run out and strike his own train so he told the engineman to wait until he had made a check.

He found that the cars had contacted the train and it was arranged for another train to pull the cars back so as to avoid damage to the cars. Apparently the yardman who was supposed to have tied the cars down failed to do so properly.

Here was a case where they were waiting to hump the car and Cunningham saw something coming down on the side of the cut that was going to be humped and he asked the engineman to stop. He went down and found there was an impact and they had to move the cars away.

The responsibility in this type of case is definitely and directly on the people who had to tie the cars in in the yard. Again it is my submission that the fireman is not required, in the sense that is used in the question before the Commission, to guard against a situation caused by others who do not properly carry out their duties.

Certainly leaving cars in position where they can roll foul is a practice that is dealt with severely and is followed through by the company. I think that that is all that can reasonably be required. Cunningham's evidence will be found in Volume 58, pages 8175-8181.

Now I want to refer to a case

related by Engineman Missler. The Commission will remember that he was an engineman on a diesel switching cars on the rear of Train No. 8 when observations were being made by this Commission at Winnipeg Depot on June 28. He later came down to Calgary to give evidence regarding the incident.

The Commission will recall that he was moving away from Train No. 8, cab leading, and was warned by his fireman to stop because of a conflicting movement on the next track. In answer to questions put to him by Mr. Justice Martineau he finally admitted that the danger of fouling the movement on the adjacent track was due to the fact that he had not looked back before backing up. Missler's evidence will be found in Volume 58, pages 8182-8209.

This is a good example, in my submission, of the danger which may arise when an engineman relies upon a fireman to keep a lookout when he should keep a lookout himself, and where he has the duty to do so. The proper practice was for Missler to have looked in the direction of his movement before starting. Had he done that there would have been no need for an emergency application. There would have been no need for any warning. There

would have been no need for any emergency situation at all.

I go further and say that if the fireman had not been there Missler would not have commenced the move before he looked, and if he had looked he would not have moved. In that way, in my submission, safety would have been improved because while there was no accident in this situation because of the calling out by the fireman, there was still a quick stop at a slow speed. There was an emergency application which under certain circumstances can cause difficulty.

Engineman Haukaas appeared in Vancouver and referred to an incident in yard service at Trail on April 4, 1957. In that case he said the fireman warned the engineman to stop when he saw a yardman fall when a hand brake came off. The yardman fell clear of the movement, landing on the station platform. He did not state where the other members of the yard crew were at that time. His evidence will be found at Volume 59, page 8291.

In this case the action of the fireman did not avert an accident because as Haukaas said, the yardman fell from the brake platform clear of the movement. On the facts we have we do not know whether other members of the crew had

seen the yardman. That is not made clear, therefore there was nothing they could do about it. The incident was over. While I must admit that the fireman did right in calling to the engineman to stop, nevertheless the yardmen who were in control or who should have been in control of the movement could well have made a decision from their vantage point and realized that there was nothing to be done except go to the aid of the injured man.

The next incident was described by Fireman Barr and this occurred in the Smiths Falls yard on April 10, 1957. The engine had been cut off and was moving on the run-around track preparatory to placing a van on the tail end of a train. A yardman working with a diesel on the next track stepped foul of Barr's engine. Barr warned the engineman to stop. He said the yardman was struck lightly and knocked down, but was not seriously injured. Barr's evidence will be found in Volume 48, pages 6873-6879.

One of the yardmen was accompanying Barr's engine and was riding on the trailing steps on the engineman's side. That would be on the back of the engine away from the direction of the movement. Barr admitted during cross-examination that the yardman

could have been on the front steps of the diesel. Again I suggest that if he had been there, and he would likely have been there if the fireman had not been there, in all likelihood he would have been able to call to this man who was foul. He would have been coming up to him. They were moving very slowly and instead of there being a like accident, there would likely have been no accident at all in my respectful submission.

Fireman Manning gave evidence about an incident which occurred on May 27, 1957, at the Pacific Terminal Elevators at Vancouver. He said that his yard diesel was pulling eight empty cars out of the terminal elevators and was just about at the Salisbury Drive crossing when a Canadian Pacific Express truck darted across, coming from the fireman's side. Manning yelled to the engineman to stop and the truck got across. His evidence will be found in Volume 59, pages 8307-8310, and pages 8316-8321.

Manning said that all three members of the yard crew were riding on the cars behind the engine. Manning admitted that one of them could have been on the front end of the diesel. Again, if there had been no fireman a member of

the crew would have been in that position and in my respectful submission have been able to warn the engineman. In this connection I would refer you to Exhibit 330.

Another incident was described by Fireman Manning which occurred on June 18, 1957, at the Terminal Dock at Vancouver. He said his engine was proceeding light on a left-hand curve past a building on the left side when a farm market truck came out from that side in front of the engine and made a "U" turn right at the tracks. Manning hollered for the engineman to stop and the truck was not hit. Manning's evidence will be found in Volume 59, pages 8310-8313, and pages 8321-8323.

Again Manning admitted that one of the two members of the yard crew who were on the rear footboard could have been on the front of the light engine and have warned the engineman had there been no fireman on the engine. Again my submission is that that is where one or both of them would have been.

The third incident described by Fireman Manning occurred on June 19, 1957. They were making a back-up movement in L yard at Vancouver with one box car attached to the rear of the engine. They were moving between two crossings when a

workman standing beside the tracks stepped back foul of the track. Manning whistled and waved to him and motioned to the engine-man to stop. The engine was stopped and at the same time, according to Manning, the workman jumped clear. Manning's evidence will be found in Volume 59, pages 8314-8316, and pages 8323-8326.

Manning did not know where the members of the ground crew were at the time, but he assumed they were on the engine-man's side. As the movement was pushing a car towards the crossing one of the yardmen must have been on the point of the movement or at the crossing. The Commission has been at this place. One of the yardmen would have had to be on that leading car under the board order which has been filed and under the Railway Act.

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-- or one of the two men was out at the crossing waiting until the point approached him, in control of the movement, and in sight of the engine; one or the other. Now, if in such circumstances the workman was, in fact, foul, and the Commission knows, in my submission, how easy it is to think that somebody is foul when they are not foul -- it is not the first time when the Commission was making its observations and somebody said to the Commission to watch out, "Skin your eye --", when, in fact, you were not foul at all. You knew the engine was coming. You had it under control and were prepared to take whatever action was necessary. But if this man was, in fact, foul, Manning thought he was, it must be pointed out that aside from the position of the yardman, the engine bell was ringing, as Manning admitted, and of course a diesel makes some noise, as the Commission knows, and it is my submission that the workman likely saw the engine, heard the bell when he was quite a distance away and moved clear, just as you and I have done in the yards in the last few months. If the fireman hadn't been there, if no action had been taken, there still would not have been any emergent condition or anything closely approaching it.

Fireman Morgan described an incident which he said occurred on June 20, 1957 at the east end of G yard. He was on a light engine proceeding engine ahead over the Gore Avenue crossing when he saw a blind man approaching the crossing. He called

to his engineman to "Hold her", and the engineman slowed up. The blind man crossed and the movement proceeded. Morgan said he did not know where the ground crew were riding.

Again in this case, just like Manning, Morgan said he did not know where the ground crew were riding. On cross-examination he said that normally there should have been a man on the leading platform to give signals and he could not say whether at the time of the incident the yardman was in his normal position or not.

Morgan, Volume 59, pages 8327 to 8330 and pages 8333 and 8335.

Here again this Exhibit 330 applies. Again I say if a man is up there, he has a vantage point much preferable to that of anybody in the cab. All I can say is, I think it is a reasonable conclusion to draw from this fact, if the yardman was where he should have been and likely was, he likely saw the blind man. He likely assessed the situation properly, that is that the blind man would cross without any difficulty, as he did cross. He knew, from his vantage point, no action was necessary. Again, I am not criticizing what Morgan did. He may have, from his place, assessed it in a different way, and because of the distance he was away from the situation, thought they should stop. The man who was in the best position to observe and take action took no action because, in my submission, he likely had appraised the situation and come to

the conclusion, likely rightly, that no action was necessary.

Now, Morgan described a second incident which occurred on July 9, 1957 near the Canadian National Steamship pier at Vancouver. On this occasion, the yard diesel was backing up pulling cars near a crossing protected by gates when Morgan saw a man inside the gates on company property staggering near the front of the engine and warned the engineman to stop. Here is a situation where the firemen's union brought this to the attention of the Commission. It is in Volume 59, pages 8330 to 8333.

In this situation there are gates and we have a man who has had too much alcohol who gets under the gates and in the way, if he was in the way. Again, there is an engine moving cab first. Now, I submit that the engineman could have seen and certainly, in this situation, it is beyond comprehension for me to understand how it could be argued that this is the kind of incident which supports the fact that firemen are required on diesel engines. There were gates on the crossing, and the only way to protect this kind of person is to stop alcohol being dispensed throughout Canada.

THE CHAIRMAN: Does Exhibit 330 apply to a crossing which is protected by gates?

MR. SINCLAIR: No, for gates, sir --

THE CHAIRMAN: No, just look at Exhibit 330. Its terms seem to apply whether there

are gates or not.

MR. SINCLAIR: It refers, in the second paragraph, to Rule 103:

"If cars are being pushed over or along a public road at grade, the second paragraph of Rule 103 applies." Rule 103 is at page 58 of Exhibit 27, and that of course says that if it is not adequately protected by gates or otherwise, a member of the crew must be on the leading car and in a position from which signals necessary to the movement can be properly given. It would, I think, be interpreted to mean, sir, that if it was adequately protected by gates, then the bulletin that was then in force would not require a man to be there.

But again, sir, under the rules that is up to the engineman. If the engineman wants to have a yardman there, all he has to do is to stop because he can say, "I need him there."

THE CHAIRMAN: I was just asking one thing, whether Exhibit 330 is intended to apply to a crossing where there are gates.

MR. SINCLAIR: I would say no.

Now, there was an incident in Vancouver about which the Commission heard from Engineer Dick, who gave evidence about an incident which had occurred the previous day when he was working at the east end of G yard at Vancouver. He said he was proceeding cab ahead pulling cars on the nose of the engine when the fireman warned him to stop

because there were cars running out of Track 11 just opposite the engine. The fireman then got off the diesel, ran over to the moving cars, got on one of them and stopped them with the hand brake, thereby, according to Dick, preventing them coming foul of the lead and hitting the diesel. Dick said that this was done by the fireman while the cars moved only one car length.

Dick, Volume 59, pages 8337 to 8343.

My submission on that is that these circumstances are hard to understand. But accepting what Dick did say, if he had looked he could have seen all that was necessary without having a fireman there. He was moving cab first down this lead, and if the cars were going to follow the engine they should have been obvious to him if he had looked. The fact is he did not look and the fireman did. The fireman likely saw them moving slightly, and certainly they must have been going very slowly on the facts dealt with here, for the fireman to get off, go over and climb the ladder on to the brake platform, then tie down the brake and do all these things before the cars reached the fouling point of the lead.

Then, Fireman Jones gave evidence about an incident which occurred at G yard in Vancouver. This incident occurred around April 15, 1957, when the yard engine on which he was working reversed its movement and some sectionmen, apparently thinking it was going to continue to go ahead,

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brought their push car foul of the lead. Jones admitted that the usual practice is for the engineman to turn around before reversing his movement, and if he had done that in this case he would have seen the push car was foul of the lead.

Jones, Volume 59, pages 8345 and 8354.

This is another occasion, the same as the one in Winnipeg, and if the engineman had looked he would have seen and he would not have started without having it in his view. But because the fireman was there, in my submission, he did not look and that is why he started the movement without turning his head, and in my submission that was quite improper and he should not have done so and would not do so if the fireman was not on the diesel.

Then, Fireman Meier described an incident which occurred on March 13, 1957 at the P and Q yards at Vancouver. The diesel came down the lead with one car attached to the cab end. It kicked the car into Track Q-9 and came to a stop. Fireman Meier said he saw a woman trespasser of about 65 years about to cross the track and when the diesel started to move ahead in her direction, he warned the engineman to stop.

Meier's evidence is in Volume 59, pages 8358 and 8363.

Here is a case of an adult trespasser on Company property. My submission is this. If a person in adult years is going to go on

railway property, obviously knowing it is railway property, then it is up to him to protect himself. I do not think it could be reasonably contended that the Company should retain firemen on diesels or that firemen are required on diesels to protect trespassers against themselves.

I think I have covered every incident that was referred to by the firemen's union in these proceedings. I tried to catalogue them and deal with every one. I think that a review of these incidents and an analysis of them cannot in any way support the contention of the Brotherhood that firemen are required on diesels in yard service to keep a lookout. I think Mr. Gonder of the Canadian National summarized this shorter than anyone else, although there are others who expressed the same view, and with your permission I should like to read from Mr. Gonder's evidence, Volume 30, pages 4225 to 4227. This has to do with whether you need firemen for lookout, and I think it puts it rather well. Mr. Lewis asked these questions:

"In spite of the fact that the fireman may have -- let me be fair -- through the years been of assistance in avoiding accidents; in spite of that, you are still ready to say that firemen are not necessary for safety, for the reasons you have just given?

A. Yes.

"Q. For example -- Mr. Chairman, if you will permit me to put a hypothetical question based on something I have been instructed upon -- supposing you had a yard switchman who was working lining up a switch and he was ahead of the engine in the direction in which the movement was to take place; he had lined up his switch and given a signal to the fireman, in this case, because they did that since the fireman was still there; then the movement started and the switchman slipped and fell on the rail on the left side and the fireman called to the engineer to block her, which the engineer did. Have you heard of such an incident happening?

A. I cannot recall any specific instance, but I would say this, first of all, that the switchman was unwise in that he did not position himself so that he could be seen by the engineman and be in a safe position on that account. He should not have stepped on the rail or he would not have slipped. The engineman, if he was wise, would not have moved the engine until he saw that switchman.

Q. I suppose you would agree with me that a good many accidents happen, in fact

"most of them, because people are not as wise as you have now theoretically laid out?

A. I do not think we can provide a guardian angel for every employee.

Q. And accidents do happen because very frequently people make wrong judgments about something?

A. Accidents usually happen on that account.

Q. They happen because people do not always observe the rules as they should?

A. Yes, usually.

Q. I am certain that you yourself as well as your railway are very concerned about safety, and I am putting to you this question: If accidents happen because people sometimes make errors in judgment and because sometimes people do not observe the rules, would you agree with me that they are as likely to occur after the fireman is gone as well as before?

A. Yes.

Q. And that the absence of the fireman on the left side of the engine in those circumstances would necessarily increase the hazard?

A. No, I am as sincere in this as I can possibly be. We have assistance from

"people who are not even railway employees in that they see things from time to time and help us.

Q. Do you mean that that would take the place of a person who has a duty?

A. No.

Q. In that connection?

A. Safety is not affected. There is no increase in the hazard.

Q. In your opinion?

A. No."

After receiving those answers, my friend said, "Thank you, that is all." I have attempted to indicate during the course of my review, it would be quite wrong, in my submission, for the Commission to draw the inference that if there had been no fireman on the diesel to warn the engineman in the various circumstances referred to, an accident might have occurred. On the contrary, if there had been no fireman on the diesel, very few of the emergencies which have been described would have arisen at all. Again, I point to those cases where a warning is given, where the diesel is moving cab ahead and the engineman by observing proper practice, keeping a lookout ahead himself, would have required no warning and he would have done so, in my submission, if the fireman was not there.

In those cases where a warning was given where the diesel was proceeding engine ahead, the engineman, in my respectful submission, would

not have moved without having a member of the ground crew on his side at the front of his engine in a position to warn him of the danger if he did not himself have a sufficient view ahead or if the engineer, in his judgment, thought there was any need to have a lookout ahead supplementary in any way.

It is because there has been a fireman on the left side of the cab that some enginemen have fallen into the unsafe practice of relying on the fireman for a lookout on the left side of the engine instead of looking for themselves or having a member of the ground crew in a position on the steps at the front of the diesel where he has a much better view than the fireman. If there were no firemen on diesels in yard service, in my respectful submission, there would be fewer emergencies and probably fewer accidents because then proper practices would have to be observed by enginemen and ground crews. The proper positioning of the ground crew would have followed. It would have been demanded by enginemen who would not move without getting their view supplemented by the ground crew and the ground crew, working as a matter of practice and as a matter of protection for themselves, would carry out their duty and be in a proper position, and therefore every operation in the yard would be at a higher standard than it has in the past.

Now, I wish to deal with a topic that was dealt with in evidence, and that is the division

of responsibility and distraction by having firemen.

THE CHAIRMAN: Before you deal with that, would you just be good enough to see if I follow you on what you say about the operational side. As I followed you, you put it somewhat like this; that instead of relying on the fireman to see, in the first place, the responsibility is on the yard crew in control of any movement to see that the engine does not move unless it can do so safely?

MR. SINCLAIR: Yes.

THE CHAIRMAN: Then, in the second place, where the engine moves cab first, with no cars in front, then the engineer has what you refer to as a panoramic view and he needs no one else as a lookout. Then, if the engine is pushing cars ahead of it, whether it is moving cab first or engine first, there will be a yardman on the point of the movement, and signals will be passed to the engineer?

MR. SINCLAIR: That is correct.

THE CHAIRMAN: And that where the engine moves engine head on, no cars in front, on a left curve a member of the ground crew will be on the front of the engine?

MR. SINCLAIR: That is right.

THE CHAIRMAN: And the same applies at a crossing as required by Exhibit 330?

MR. SINCLAIR: Yes, sir.

THE CHAIRMAN: And then you would say that Rule 104(7) is supplementary as to fouling of track?

MR. SINCLAIR: Yes, sir.

THE CHAIRMAN: And then I suppose your conclusion is -- and I want to be clear as to your conclusion -- that on that footing --

MR. SINCLAIR: Pardon, I didn't hear that?

THE CHAIRMAN: -- on that footing the employment of a fireman is a sort of a doubling up and the burden of that should not be placed on the railway, it is an unnecessary doubling up?

MR. SINCLAIR: Yes, my lord.

THE CHAIRMAN: Which the railway should not be required to do?

MR. SINCLAIR: Yes, my lord.

THE CHAIRMAN: Does that correctly summarize your argument on that aspect of it?

MR. SINCLAIR: I think that

summarizes it very well, if I may say so, sir.

THE CHAIRMAN: All right.

MR. SINCLAIR: Now, dealing with the point of division of responsibility and distraction, this is another factor which I think ought to be taken into account, in considering what effect the removal of firemen would have on the safety of yard operations.

In my respectful submission there can be no question but that firemen tend to be less alert than they should be because of the fact that they have nothing to do. In saying this I am not intending to cast any reflection upon the men employed as firemen. I think it would be perfectly natural for any person employed as a fireman on diesels in yard service to be less alert than a person more fully occupied.

Mr. Gonder thought the presence of the fireman on a yard or road diesel on occasion has an adverse effect on the work done by the other members of the crew. He went on to explain his opinion on this matter as follows, and I am quoting from Volume 30, page 4186:

"Mr. Gonder: The presence of an employee, no matter how conscientious he may be, who has nothing to do is an irritant to the

"other members of the crew. Furthermore, when responsibility is divided among a number of employees rather than a minimum requirement of employees there is a tendency for alertness to be affected."

Mr. Emerson thought that the presence of the fireman was a factor in causing mishaps. He stated as follows, at Volume 32, page 4535:

"I believe that the removal of the fireman will improve our position on safety. In the first place, it will compel yard crews to position themselves properly where they can work in view of the engineman. In so doing, this will remove the situations in which, through division of responsibilities unnecessary divisions of responsibilities, mishaps can and have taken place."

I read that also this morning in my introduction.

Now, when Mr. Emerson was cross-examined on this opinion he illustrated his point by referring to an incident which occurred in the Regina yard on May 4, 1957, and this was the second of the four incidents referred to in the evidence of Engineman Duke

given in Calgary and which I had something to say about a few minutes ago.

That was the case in which the Canadian Pacific yard diesel moving light sideswiped Canadian National cars moving on a converging track at the left of the Canadian Pacific engine. The fireman in that case was not alert and failed to give a warning until it was too late.

Mr. Emerson pointed out that had there been no fireman, the engineman could only have moved on the signals of the ground crew who would necessarily have positioned themselves at the front of the engine instead of riding the trailing footboard.

THE CHAIRMAN: What is the reference for that?

MR. SINCLAIR: Emerson Volume 33, pages 4686-4689.

The tendency of some firemen on diesels in yard service not to be alert -- I want to emphasize that, it is not that we are trying to say that these men are any different than anybody else. There is a tendency for them not to be alert and this was also referred to by certain of the Brotherhood witnesses, not just the company.

Stewart, for example, stated frankly that he had seen firemen paying

no attention to the direction of movement but sitting with their backs to the direction of movement and had criticized them for doing so. The Commission will recall seeing this situation during their observations. I recall in particular to you the situation at Calgary where they were sitting in an automobile watching the movement as it came around a curve just outside of Calgary station. Now, Stewart also admitted having heard of some firemen who had been sleeping on duty and even of firemen who while still on duty had left the diesel altogether -- gone off and left it and the work went on.

Stewart - Volume 41, pages 5744-5746.

Now, again not just Stewart but Colpitts recalled the trouble the company experienced in Winnipeg of the back-rests on firemen's seats being bent back, apparently to enable firemen to recline on the seats and the bulletin which was issued to stop this practice.

Colpitts also referred to the fact that large amounts of reading material were found in seat boxes of diesel yard engines after a check had been made in the Winnipeg terminals and of the instance of one fireman observed to be reading a book by the Vice-President when his engine was

in motion.

Colpitts also recalled cases of firemen being accused of being asleep and of one man being fired for being asleep while on duty. He admitted having given a general alarm to the firemen that they would be dismissed by the company if they were caught sleeping on duty. That is in Colpitts' evidence in cross-examination, Volume 43, pages 6112-6115.

THE CHAIRMAN: What were the pages again?

MR. SINCLAIR: 6112 to 6115.

Now, some firemen apparently in an effort to find something to keep them busy when there is nothing for them to do in my submission have been observed to call car lengths to the engineman while switching in the yards at the same time as the engineman is receiving hand signals from the ground crew.

Mr. Gonder referred to one such incident on the Canadian National on page 3 of his trip reports which are Exhibit 161. On that occasion the information the engineman received from the fireman was not followed by the engineman because he was receiving different information from the signals of his ground crew.

Gonder dealt with that in evidence

in Volume 29, page 4175.

Mr. Alver in the observations he made of switching in the Toronto yards reported this practice of firemen calling car lengths when signals were being received from the ground crew. He said that in his Exhibit 80, pages 1, 2, 4, 7 and 10.

Now, there can be no doubt that any movement can be made without car length signals being given.

Doull admitted this to me at Volume 37, page 5169.

THE CHAIRMAN: What is this point?

MR. SINCLAIR: That any movement can be made without calling the car signals, one car, two cars, three cars, half a car, and the point I wish to make is this, that the calling of car length signals by a fireman is, in my submission, a distraction to the engineman and might become a real danger where the engineman is receiving hand signals from his ground crew for two reasons.

One, the ground crew are better able to make the assessment and they may be giving him a slow or a hand signal of two cars while the fireman calls one car or four cars; in other words, that the fireman is calling information which from his location cannot be as good as that of the man who is closer to the point to where they are going

to spot the car.

And secondly that by a fireman calling to the engineman while the engineman has got his mind directed to the ground crew the receiving signal may cause the engineman to turn his head, may cause him to pull his head in and in that way distract him from the work that he is in the act of doing which is controlling his engine in accordance with the signals of the ground crew.

Now, the evidence I have referred to regarding the fireman's tendency not to be alert and to constitute a distraction to the engineman is further support for the view that not only is the fireman not required but his presence on diesels in yard service tends to affect adversely the safety of yard operations.

I wish to talk to the Commission for a little while about diesels in yard service without firemen. As I mentioned in my introduction railways have had a considerable amount of experience in operating yard diesels without a fireman and those operations have been carried on safely and efficiently according to the evidence.

Now, I would like to refer to the evidence on this point in support of my contention that firemen are not required

on diesels in yard service to keep a lookout, which is the main point being made by my friend.

Mr. Crump gave evidence that Canadian Pacific operated the diesel yard switcher which was acquired in 1937 without a fireman and that it functioned quite successfully.

Crump - Volume 34, page 4845.

When the first five regular yard diesels were acquired in 1943, the company intended to operate them as well without a fireman. When the Brotherhood protested the company maintained that the services of the firemen were not required on these locomotives. The Brotherhood, however, applied pressure to have firemen assigned to all units and the company gave way. An understanding was reached jointly with Canadian National under which firemen were assigned to all units except that one shift in the Montreal terminals was operated successfully for a number of years with only an engineman in the cab.

I have there summarized Mr. Crump's evidence in Volume 34, pages 4847-4848 and Volume 35, pages 4851-4852.

The first yard diesels obtained by Canadian National in the early 1930's were operated with a fireman but in

September 1934 instructions were issued by the company for the withdrawal of firemen on yard diesels in the Montreal terminals. The Engineman's Brotherhood complained of this and the company investigated the matter but decided there was nothing for the firemen to do.

Gonder -- Volume 29, pages 4156-4157.

THE CHAIRMAN: Mr. Sinclair, when you give those references you are still a little fast.

MR. SINCLAIR: Volume 29, pages 4156-4157.

In January, 1935, a complaint was made by the Enginemen's Brotherhood to the Board of Transport Commissioners and an investigation was made by the inspectors of the board and operations of the diesel working without a fireman in yard service in Montreal. That is Exhibit 157.

THE CHAIRMAN: That was what date?

MR. SINCLAIR: January 1935, my lord. That is, the complaint is Exhibit 157. I think it was signed by Mr. Chase, then the head of the trainmen's Brotherhood. The inspectors of the board made an investigation and a report. They said that they failed to see any danger or hazard through the diesel engine in question being operated with one man.

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They also stated that both the engineman and the yardman whom they questioned agreed that they found no inconvenience whatsoever in the switching operations with one man on the engine. The result of their investigation was reported to the Brotherhood and Canadian National continued to operate the diesel without a fireman.

Gonder, Volume 29, pages 4157-4166.

THE CHAIRMAN: Operate till when?

MR. SINCLAIR: Until they were forced --

THE CHAIRMAN: By this agreement?

MR. SINCLAIR: By this agreement I am talking about.

THE CHAIRMAN: Of 1943?

MR. SINCLAIR: Yes. Then, the exhibits in which those reports are to be found are Exhibits 158, 159 and 160.

Now, in 1943, as I have just said to the Chairman, Canadian National was operating six diesels in the Montreal terminals without firemen. That is the evidence. According to the man who operated those diesels it was a satisfactory operation.

In that year, however, Mr. Gonder said --

THE CHAIRMAN: 1943?

MR. SINCLAIR: Yes -- at the

insistence of the firemen's union negotiations were carried on in conjunction with Canadian Pacific and as a result Canadian Pacific and Canadian National agreed to employ firemen and Mr. Gonder pointed out an agreement was entered into in the interests of industrial peace at the height of the war. He said it was because of the insistence of the Brotherhood and not because of any unsatisfactory experience that Canadian National agreed to employ firemen on these diesels. That is to be found in Gonder, Volume 29, pages 4166-4170.

Now, as I mentioned in my introductory remarks in more recent years railways have had considerable experience in operating yard diesels of under 90,000 pounds on drivers without a fireman and this is permitted under one of the exceptions to the diesel rule in the collective agreements. While these diesels are smaller in size than regular yard diesels there is, in my submission, no more need for having a fireman to act as a lookout on one of the regular diesels whether it be 600 horsepower, 1,000 horsepower or whether it be only 400 horsepower as it is when it is under 90,000 pounds than there is for having a fireman act as a lookout on one of these

smaller units.

At the time this hearing commenced Canadian Pacific, according to the evidence, had just received delivery of two units of under 90,000 pounds. The company's program was to receive seven of this type of diesel for delivery in 1957, all of them, of course, to be operated without a fireman.

THE CHAIRMAN: That is seven additional, I suppose?

MR. SINCLAIR: No, total. One of these units has been at Yorkton, Saskatchewan, since the end of June and is under the jurisdiction of the witness Mr. Smith who was called by the company. He stated that in operation it has been very successful and that various types of switching had been carried out in the normal manner and he pointed out it was the only switching engine at Yorkton, had to do industrial switching, yard switching, elevator switching and all types of switching.

He went on to say that the under 90,000 pound weight diesels did exactly the same work as the heavier diesels but that on the long cuts of cars they would take longer because they were not as powerful.

That evidence is the evidence of Gossage, Volume 2, pages 197-202, Fraine, Volume 16, page 2108, and Smith, Volume 60,

pages 8455-8459.

THE CHAIRMAN: Mr. Sinclair, you didn't give the reference to Mr. Smith?

MR. SINCLAIR: Volume 60, pages 8455-8459. Fraine dealt with these matters of under 90,000 pounds I have been recently talking of in Volume 16, page 2108, and Gossage at Volume 2, pages 197-202. Again all the evidence I have summarized being that of Mr. Smith.

HON. MR. McLAURIN: Up to 1957 you only had two?

MR. SINCLAIR: No, we got two in 1957 and we were to get five more.

HON. MR. McLAURIN: You have got a total of seven now?

MR. SINCLAIR: No, they are not here yet.

HON. MR. McLAURIN: How many have you got in operation now?

MR. SINCLAIR: We have two.

HON. MR. McLAURIN: Just two?

MR. SINCLAIR: That is right.

HON. MR. McLAURIN: And one of them is the one you acquired in 1937?

MR. SINCLAIR: Oh, no, sir.

HON. MR. McLAURIN: That fellow is played out, is it?

MR. SINCLAIR: No, that was sold to the Marathon Paper Company. You will

recall the trouble they had. It had a Harland-Wolfe motor.

HON. MR. McLAURIN: When did you start with your first diesel of under 90,000 pounds?

MR. SINCLAIR: February or March, I think, 1957.

HON. MR. McLAURIN: Then your operation with your existing yard locomotive of under 90,000 pounds has just been 1957 experience?

MR. SINCLAIR: That is right, sir.

Now, Canadian National operate two under 90,000 pound type diesels in Prince Edward Island and have for several years. When first used they were put in road service--

THE CHAIRMAN: Tell me that again, please?

MR. SINCLAIR: They have had some operating in Prince Edward Island for a number of years.

THE CHAIRMAN: How many, do you know?

MR. SINCLAIR: They have had two units operating over in Prince Edward Island for a number of years.

When they were first put in service in Prince Edward Island they were used as in road service and because of certain attachments on them to make them usable on road service they weighed over 90,000 pounds

weight on drivers. When they were put into yard service Canadian National removed certain appurtenances on them. Weighing over 90,000 pounds they had to have a fireman, but they took these appurtenances off, reduced the weight below 90,000 pounds, just under, and they then did not operate with a fireman.

Gonder, Volume 29, pages 4144-4145.

This led to a complaint by the Brotherhood to the Canadian Railway Board of Adjustment which was not sustained. That is Exhibit 155 and Gonder dealt with it at Volume 29, pages 4145-4149. And the point I make upon that, Mr. Chairman, is this, that the firemen were not interested in safety, that it was a make work rule and that their action in regard to this is a demonstration of that fact, this very complaint I am referring to.

THE CHAIRMAN: Well, just how do you put that last point? You say the union were not interested in safety. Why do you put it that way?

MR. SINCLAIR: I am saying that having agreed that diesels under 90,000 weight on drivers would not require firemen that the Canadian National having taken the diesel and put more appurtenances on it like a pilot to run on a road, when the Canadian National brought it into the yard and took

those appurtenances off so as to bring the weight below 90,000 pounds the firemen's union made a complaint, argued before the Canadian Board of Adjustment as Exhibit 155 shows that it was unfair to take a unit and remove things off it so as to come under 90,000 pounds and I say my submission to the Commission is that this is an indication of what I have said earlier that the firemen's union are treating and have treated this diesel rule as what it really is, a make-work rule and not a matter of safety.

THE CHAIRMAN: I think we had better adjourn at this point unless you had a sentence you wanted to close on.

MR. SINCLAIR: No, sir, I have many sentences I could close on, sir.

---At 4.00 p.m. the hearing adjourned
until 10.30 a.m., Tuesday, October 29,
1957.

ROYAL COMMISSION ON EMPLOYMENT OF FIREMEN
ON DIESEL LOCOMOTIVES IN FREIGHT AND YARD
SERVICE ON THE CANADIAN PACIFIC RAILWAY

63

PROCEEDINGS

DATE: October 29, 1957

PLACE: Ottawa, Ont.

PAGES: 8897 - 9045

VOLUME: 63

E. L. FEATHERSTON
SHORTHAND REPORTER
241 MANOR AVENUE
ROCKCLIFFE PARK
OTTAWA, CANADA

Hon. Mr. Martineau

- 8897 -

I N D E X

October 29, 1957

A R G U M E N T

SINCLAIR, I.D. 8899

ROYAL COMMISSION ON EMPLOYMENT OF
FIREMEN ON DIESEL LOCOMOTIVES IN
FREIGHT AND YARD SERVICE ON THE
CANADIAN PACIFIC RAILWAY

Proceedings of public
hearing held at Ottawa,
Ontario, Tuesday,
October 29, 1957.

PRESENT:

Hon. R. L. Kellock,	Chairman
Hon. C. C. McLaurin,	Member
Hon. Jean Martineau,	Member
Douglas M. Fraser,	Secretary
A. R. Winship,	Asst. Secretary

APPEARANCES:

C. J. A. Hughes, Q.C.,	Representing the Commission
I. D. Sinclair, Allan Findlay,	Representing the Canadian Pacific Railway Company
David Lewis,	Representing the Brotherhood of Locomotive Firemen and Enginemen

Tuesday,
October 29, 1957.

63rd DAY

MORNING SESSION

---The Commission resumed at 10.30 a.m.

THE CHAIRMAN: Mr. Sinclair, is there an exhibit giving particulars of diesel power acquired from year to year? Do you have that?

MR. SINCLAIR: We will look that up. The early years are covered by Exhibit 166; that covers the period from 1943 through 1948. That is to give the 71. The application since that date I do not think --

THE CHAIRMAN: The application since that date, what?

MR. SINCLAIR: I do not think there is an exhibit.

THE CHAIRMAN: Since that date it is just stated in percentages?

MR. SINCLAIR: The only percentages we gave were for the year 1956 and the whole year 1956. Mr. Fraine gave that. Mr. Crump, when he was on the stand, spoke of the percentages as of that time.

THE CHAIRMAN: Yes, all right.

MR. SINCLAIR: I was discussing the experience of railways with yard diesels under 90,000 pounds weight on drivers. I had dealt with the Canadian National Railways in Prince Edward Island. Since November 1956 the Canadian National has also had diesel units of under 90,000 pounds weight on drivers performing switching at Kamloops and Kelowna. That is Gonder, Volume 29, pages 4150-4151.

The Canadian National has had three units of that type in Newfoundland, but because of the narrow gauge of the railway there special --

THE CHAIRMAN: Mr. Sinclair, when you read you do it just a little fast and it is pretty hard for us to appreciate what you are saying. Would you just slow up a little bit? In 1956 you say that the Canadian National had switchers where?

MR. SINCLAIR: At Kamloops and Kelowna, British Columbia; that is November, 1956.

THE CHAIRMAN: And you gave the reference for that?

MR. SINCLAIR: Gonder, Volume 29.

THE CHAIRMAN: Yes, I have that.

MR. SINCLAIR: The Canadian National also has three units in Newfoundland but because of the narrow gauge of the railway there those units are equipped with special trucks which are heavier and which put the weight of the unit over 90,000 pounds. Therefore under the agreement a fireman is assigned to those units. That is Gonder, Volume 29, pages 4155-4156.

There is also evidence of the operation of diesel units of under 90,000 pounds weight on drivers without a fireman on United States railways.

Mr. Gonder gave evidence of switching being done at St. Thomas, Ontario, by the Wabash Railway on its joint section with Canadian National. The work there, he said, was done without a fireman on the regularly assigned engine, but when that engine was off for inspection or repairs and a heavier unit was assigned, because of the agreement a fireman was assigned to that unit although the work being done was the same. That is Gonder, Volume 29, page 4149.

Mr. Shepp gave evidence of observations he had made at Des Moines, Iowa, on the Rock Island with diesels of under 90,000 pounds weight on drivers. Based on his observations he said that the industrial freight switching work which was being performed was being done excellently and in a minimum of time. That is Shepp, Volume 4, pages 494-496.

Mr. Kiley, President of the Milwaukee Railway, stated that his railway is operating a number of diesel units of this class, of which two are in yard service. The company states that because of the agreement they are operated without firemen. That is Kiley, Volume 28, pages 3940-3941.

Brotherhood Witness Turner, who holds a position in the Brotherhood, came from the New York Central. When I put it to

him he recalled proceedings which had taken place in the United States in 1943. At that time the Brotherhood complained that it was unsafe to operate 90,000-pound yard switchers without a fireman. He recalled the report of the Presidential Emergency Board which stated, and I shall quote an extract from that report which I put to Mr. Tucker:

"No convincing evidence was presented to indicate that failure to use a fireman in these operations constitutes any undue hazard or that it has resulted in otherwise preventable accidents. Under the circumstances the Board sees no reason why the diesel agreement of 1937 should be modified in this respect. The Board therefore recommends that the proposal of the firemen be denied."

That is Tucker, Volume 45, pages 6381-6382.

Evidence was given that there are a number of industries around Montreal which do switching with their own diesels without a fireman. Mr. Lefrancois mentioned Canadian Tube, Distillers Seagram Corporation, Canadian Car and Foundry, Dominion Bridge and Canadian Allis-Chalmers. That is Lefrancois, Volume 12, pages 1561-1562.

THE CHAIRMAN: Are those units of under 90,000 pounds weight on drivers?

MR. SINCLAIR: No; some of them are 50-ton diesels.

In the third of Mr. Gonder's trip reports he mentions the fact that switching at the Dominion Bridge Company's plant and several other industries in that area is performed by Dominion Bridge's locomotive, which is a 50-ton unit. It is operated without a fireman. That is Exhibit 161, page 3-A, and his evidence in regard to that.

I believe members of the Commission during their viewing of the Montreal Terminals saw diesels in operation at the plants of Canadian Tube and Distillers Seagram. The Commission will recall that when they were there those diesels were being operated with a crew of two, that is one man on the engine, an engineman, and one man on the ground, a yardman.

According to the evidence, diesels used in yard service by railways in the Netherlands, Great Britain, France, Germany and Switzerland employ only one man in the cab. Koster, Volume 5, page 589, and Exhibit 180. That Exhibit 180 is the summary by Mr. Emerson as to that situation.

The evidence is that the only country in Europe where there is a fireman employed on diesels in yard service is Italy. That is Imhof, Volume 52, page 7470.

I think Mr. Imhof said that he covered everything except what was behind the iron curtain. There might be some cases there, but we will not go into them.

THE CHAIRMAN: Better not discuss curtains.

MR. SINCLAIR: The members of the Commission of course had an opportunity to observe yard operations in France, Switzerland, the Netherlands and England. In each of the four countries the switching observed by the Commission was carried out with only the engineman on the engine. I should like to review some of these observations for a moment.

In France, at the Sotteville Marshalling Yard outside of Rouen, the Commission observed the three basic moves performed by yard crews in moving traffic from a classification to a departure yard. You will recall that on Friday, September 13, the Commission observed a diesel engine with the engineman in the cab alone and a ground crew of three make, first, a straight pull-down; secondly, a double-over and then a pull-down; and, thirdly, the coupling up of a classification track. On that day the Commission also observed an engine working the hump and going over the hump to trim or make room in the classification tracks. In

that case there was only one man in a cab.
My submission is that all this work was performed expeditiously and with safety.

In the afternoon of that day the Commission observed industrial switching at Petit Quevilley. Here there was switching which required one of the three members of the ground crew, the Commission will recall, to go wide onto a busily travelled highway to relay signals. This yardman positioned himself in a manner similar to that which the Commission observed when switching was performed at the terminal dock at Vancouver.

I think it is only fair to say that the Rouen Highway was busier than the one used by the switchman at the terminal dock.

Later in the afternoon the Commission moved down to the Normandy Boat Builders plant. They will recall that that plant was right on the street line, that the track was right in the highway. Under those circumstances a fourth groundman joined the crew because of police regulations. They were switching right on the highway and a fourth man was assigned.

Another move that was made was taking the engine and a car across the highway, which was manually flagged. The

spotting was made by the engineman alone with a ground crew of two, one protecting the crossing and one making the spot and getting the pin.

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On Monday, September 16, the Commission observed flat switching at Gevrey-Chambertin marshalling yard. The Commission will recall that in one of the moves there was a double reverse curve, the ground crew of three positioning themselves in such a way as to stay in view of the engineman. This was a difficult switching manoeuvre and it was performed in an expeditious manner, I submit, and the layout was somewhat similar, on account of the obstructions by the tower and the yardmaster's office, to the move that the Commission observed at Galt, Ontario.

The Commission will also remember when these observations were made in the yards that on a number of occasions when the yard locomotive was moving engine ahead and where the engineman had a sufficient view of the track, the ground crew did not come up to the leading point, but when the engine was moving engine ahead and they went into a curve to the left one of the ground crew did come up and ride. Again at Chambertin I recall -- and this was drawn particularly to the attention of the Commission at the time -- that just before the Commission left there a shift was coming off work and there were a goodly number of shop men walking across

the yard going towards their trains and towards their homes. In that respect the situation is similar to that observed by the Commission at Winnipeg where they also observed men walking across the yard at the conclusion of a shift.

The moves I have just referred to both in flat switching in the yards, in the hump switching and industrial switching, were conducted without a fireman and obviously, in my submission, in a safe and efficient manner.

In France, as well as in Switzerland and in Holland, the Commission will recall that because of the type of couplers, when joints were being made one of the ground crew would get between the cars and let the cars come down on him, moving after the impact. My submission is that this requires greater care on the part of the engineman if the yardman is not to be injured while in this, to our view, hazardous position. I am sure every member of the party who had not seen this situation before was struck by the additional hazards this type of coupling entailed over the automatic couplers that are used on all Canadian Pacific equipment or equipment handled by Canadian Pacific.

In Switzerland the Commission had the opportunity of visiting at Basel a very busy yard with three large Swiss electric locomotives working through three throats with switch tenders at each throat. I do wish to recall to the Commission the speed with which this switching was carried on. When engines were running light the engines were moving at speeds of up to 15 miles an hour and better and during switching operations either pushing, pulling or kicking the moves were being made at around 12 miles an hour. It was a very fast switching operation both of head end passenger cars and of freight cars.

HON. MR. McLAURIN: Was that at Basel?

MR. SINCLAIR: Yes. Now, Mr. Chairman, we have heard something, and maybe more than something, during these proceedings about the view afforded the engineman from Canadian Pacific yard diesels. The electric locomotives that the Commission observed performing this high speed switching at Basel did not provide nearly as good a view as Canadian Pacific diesels moving either engine ahead or cab ahead. I drew this to the attention of the Commission at the time and to the attention of my learned friend. Indeed, I asked my learned friend to come up

on the diesel with me so that he would have first hand knowledge of the view. He declined, but I know that the Commission did make the observation.

Now, the Commission will also recall here that when cuts were made and men were riding the cuts, on a number of occasions they could not ride the leading car because it was not equipped with a hand brake, so that they had to go back sometimes to the middle of the cut and get in between the cars to handle the hand brake and to hang out when they wanted to give a signal to the engineman. When they were controlling their cuts after they were cut off, they were hanging out watching out where they were going. Notwithstanding this, I submit that the switching was carried out safely and efficiently because the men were operating, in the light of the situation with which they were faced, with care, taking into account the situation that they were meeting.

On Wednesday, September 25, the Commission had the opportunity of viewing industrial switching in the morning at Waalhaven outside of Rotterdam. In this industrial area, which is made up of large refineries, it was necessary to switch across a busy highway. Some of the engines that the

Commission observed were working with a two-man ground crew and others with a three-man ground crew, and all of them, of course, with only the engineman on the engine. You will recall that the moves were manually flagged across the highway, sometimes with a man walking across and sometimes riding on the engine as it moved engine ahead as it came out to the lead track.

In the afternoon of that day the Commission observed flat switching at the Rotterdam-Figaenoord yard. There were three engines working in the area, each with an engineman alone in the cab and a three-man ground crew. Cars were being classified by being kicked into yard tracks and the switching was being performed over a public crossing protected by gates which was a busy crossing. There were many people -- pedestrians, bicycles, motorcycles and a few cars lined up.

I do not think that my learned friend or his advisor, the president of the Fireman's Union, could reasonably contend that there was any lack of safety or efficiency in the switching the Commission observed. I am sure the Commission will agree that it was of the highest order and was performed in a most admirable fashion.

I might recall to the Commission that Mr. Shepp in his evidence said that in switching what was required was rhythm. The Commission saw rhythm in Europe.

On September 27 and on September 29 the Commission observed yard switching in Britain. The type of couplers used in Britain is different from those used on the continent. In Britain they are of the loose link type. Here the yardmen did not get between the cars but used poles to detach and attach the cars, and to do so they had to do it on the move, sometimes in a half run.

As mentioned earlier, at St. Pancras goods yards Mr. Justice Kellock and Mr. Justice Martineau were on an engine and observed from the speedometer on that engine that the switching was being conducted at a steady rate of ten miles an hour, that times without number the engineman would bring the speed up to ten miles an hour when pushing and pulling even though he was going into a restricted clearance and even though he was working with a man with a pole to attach and detach the cars.

There was also the switching that the Commission observed at Nottingham. There the Commission observed cars being

pushed into a freight shed. Indeed, they observed cars being kicked into one track in the freight shed. It was explained to the Commission that this was under an arrangement and they knew what was expected and that is why they kicked them into this particular track. Here was a sharp curve with a restricted clearance and again there was no fireman. It was obvious, in my respectful submission, that the absence of a fireman did not interfere in any way with the safety or the efficiency of the switching work.

Before I leave the matter of yard and industrial and hump switching in Europe, I do wish to point out to the Commission that in Switzerland the Commission observed and, indeed, also in Britain, steam engines in the yard where there was a fireman. I submit it was obvious that the additional man on the steam engine did not improve switching or the safety of the switching moves.

With respect to this matter of lookout and the necessity or lack of it of a fireman for the purposes of lookout in yards, in my submission the evidence makes it clear that a fireman is not required to act as a lookout on diesels in yard service. Any observations which the engine-

man cannot make himself can be made for him by members of his ground crew when properly positioned and the engineman will operate more safely when he acts on signals given directly to him by members of his ground crew.

The incidents which have been described by Brotherhood witnesses do not indicate, in my submission, that if the firemen were removed from yard diesels more accidents would result. Indeed, for the reasons I gave when reviewing these incidents, if firemen were not employed proper switching practices would have to be observed with the result that yard **operations** would, if anything, be carried on more safely than at present.

Finally, I do submit that the successful experience which railways have had in operating diesels in yard service without firemen, not only in Europe but in Canada and in the United States as well, confirms the opinion of the responsible officers of Canadian Pacific that firemen are not required on yard ~~diesels~~ to act as a lookout.

Earlier in my summation I dealt with the four bases that had been suggested by the union. The first was lookout and



the second was the use of the fireman as a signal passer in yards, and I now wish to discuss that.

The Commission will recall that during the earlier part of the proceedings a great deal of time was spent on this by the Brotherhood, and it was my impression that the position taken by the Brotherhood was that signal passing was the most important function of a fireman in yards and the chief reason why firemen were required on diesels in yard service.

However, as the hearings progressed, and particularly after switching at the various yards of Canadian Pacific had been viewed by the Commission, I think I am correct in saying that less emphasis was placed upon signal passing and the use of a fireman as a signal passer by the Brotherhood.

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Mr. Sinclair.

The Brotherhood position now, I think, is that the alleged duty of a fireman as a signal passer is of less importance than they formerly put it, and of less importance than his duty as a lookout which I have just discussed.

However, both in the cross-examination of company witnesses and in the evidence with respect to yards given by Brotherhood witnesses, it was suggested that there were numerous places in the company's yards where switching could not be performed if the fireman was not used as a signal passer. I think to be fair, my understanding is that the Brotherhood has now abandoned this position, but they would like, if I may say so, to contend there is still a matter of safety and efficiency and the part the fireman plays in that in yards. In any event, whatever the position of the Brotherhood may now be, it seemed to me that I should review for the Commission the evidence relating to those locations in the company's yards where counsel or witnesses for the Brotherhood appeared to think the greatest difficulty would be encountered in switching without a fireman. When you look at these and analyse them, and analyse the evidence, there is quite a conclusion that I think must necessarily be drawn. I should state it shows, in my respectful submission, how wrong these firemen and other witnesses were; how they had misappraised the situation.

Now, Mr. Johnson and Mr. Lefrancois were called to describe the operations in the Montreal yards. Perhaps I should preface my remarks about the firemen as signal passers by recalling to the Commission the opinions of the company's officers in regard to this matter of signal passing and the so-called necessity of the firemen for this work. Mr. Johnson from St.Luc said there was no place in that yard where it was necessary to use the fireman as a signal passer.

Johnson, volume 10, page 1177.

Mr. Lefrancois said that he had checked all sidings in the Montreal terminals, but knew of no place where it was necessary to use the fireman as a signal passer.

Lefrancois, volume 10, page 1254.

Mr. Alver, who gave evidence with respect to the yards at Toronto, stated that he had checked all sidings in Toronto terminals in the previous six months and that except for five industries in the Ashbridges bay area, there is no place in the Toronto terminals where switching cannot be done with signals being given direct to the engineman. The five industries he referred to are those specifically mentioned in the instructions which he had given to yard crews at Toronto by a bulletin dated February 21, 1957, Exhibit 79.

Alver, volume 15, pages 1913 to 1914 and

Exhibit 79.

In his evidence, Mr. Alver suggested that switching at these five industries might be carried out by signals passed directly to the engineman with a dual control yard diesel. Members of the Commission will recall that when they were in Toronto in June that they observed a dual control yard diesel being used to switch these locations. I submit it was obvious from these observations by the Commission the switching was being performed satisfactorily, efficiently and safely.

Alver, volume 15, page 1974.

Mr. Kelley was of the opinion that there is no need to equip diesels in yard service with dual controls in order to carry on switching at Winnipeg and Calgary as long as the ground crews are in their proper positions. He said signals could be relayed directly to the engineman.

Kelley, volume 13, page 1633.

Mr. Shepp stated that he did not know of any place in either the Calgary or Vancouver yards where signals cannot be given direct to the engineman.

Shepp, volume 3, pages 389 to 390.

These and other company offices have made a careful check of the company's yards throughout Canada with the result that the company was satisfied that switching could and can be

carried out at any place in any of its yards without the use of a fireman as a signal passer, and that it could be done with signals directly to the engineman, safely and efficiently. Accordingly, a bulletin has been issued throughout the system directing yardmasters and yard foremen to arrange their work so that signals will be given directly to the engineman. I introduced this bulletin during the cross-examination of Fireman Witness Hopkins, and it is Exhibit 273. Mr. Smith told the Commission that the bulletin in this form was made applicable to all yards on the company's system, and Mr. Nichol specifically stated Exhibit 273, which was the London bulletin, was in effect in the London division.

The references are Exhibit 273; Smith, volume 60, pages 8453 to 8454; Nichol, volume 61, pages 8662.

THE CHAIRMAN: Well, it is agreed by all witnesses that that is the preferable way to give signals, where it can be done.

MR. SINCLAIR: Yes, sir.

THE CHAIRMAN: My recollection of the evidence is that is common ground.

MR. SINCLAIR: I have made notes, and I have drawn them all together, including statements of counsel on that to the Commission, and I will give those to the Commission.

MR. LEWIS: Was it not Exhibit 273 that I

admitted the other day was system-wide?

MR. SINCLAIR: I think you admitted that as to Exhibit 331 and perhaps 273 as well.

MR. LEWIS: I do not think there is any doubt about that, and specific references are not needed.

MR. SINCLAIR: Company witnesses were cross-examined at some length as to how switching could be done at specific locations in the various yards of which they had knowledge without using the fireman as a signal passer. In addition, a number of Brotherhood witnesses gave evidence to the effect that the fireman was required as a signal passer when switching at various places in these yards. I propose now to review these various locations and deal with them as briefly as I can.

I come first to Montreal. Evidence with respect to switching at specific locations in Montreal yards was given by Mr. Lefrancois. No Brotherhood witnesses were called to give evidence of switching in the Montreal area, although it contains the largest switching operations of Canadian Pacific.

First, there was Dominion Oilcloth, which was Exhibit 57, and Mr. Lefrancois was examined and cross-examined at great length about switching at Dominion Oilcloth. He explained that at one time the fireman had been used there as a signal passer, but this had

been changed and the fireman was not now being used to relay signals.

Lefrancois, volume 10, pages 1254 to 1277; volume 11, pages 1440 to 1466; volume 12, pages 1469 to 1472.

I do not think I need to review all that evidence as to how the move is carried out without firemen because the members of the Commission viewed switching at Dominion Oilcloth, and I think it was clear from the remarks of the Commission, when Mr. Lefrancois was on the stand, and at a later time, that the switching they had seen performed at Dominion Oilcloth was substantially as Lefrancois had described it, and that the firemen had not been used as a signal passer. I particularly refer to the remarks of Mr. Justice Kellock and Mr. Justice Martineau in volume 19, pages 2500 to 2503.

THE CHAIRMAN: I will recall something to you, Mr. Sinclair, of which you are no doubt aware, that any remarks which fall from the tribunal during the hearing, are purely tentative and do not bind.

HON. MR. McLAURIN: And sometimes are for the purpose of entertainment.

MR. SINCLAIR: I have not heard that type of remark from the bench.

THE CHAIRMAN: Not very entertaining.

MR. SINCLAIR: Some of them I have

laughed at, but some of them I must say I had a laugh inside.

HON. MR. McLAURIN: There was no amusement tax.

MR. SINCLAIR: I am not trying to recall to the Commission particularly any of their remarks. I can recognize that many of the remarks from the court are, in the way of innuendo, to bring out evidence or clarify it rather than express an opinion. I am doing it on that basis when I refer to any remark of the Commission.

Then, there is the St. Henri yard or the Glen yard as it is commonly known at Montreal, and it is exhibit 53. Mr. Lefrancois was also examined and cross-examined at length about switching at this location, and explained how it was done with the members of the ground crew positioning themselves on the engineman's side on the outside of the left-hand curve and giving signals direct to the engineman. No evidence was given to contradict Mr. Lefrancois, and of course the Commission also observed these locations.

Lefrancois, volume 10, page 1278 to 1286 and volume 12, pages 1526 to 1540.

Then there was Mile End, which was Exhibit 59. Mr. Lefrancois gave evidence that switching could be done at Mile End without a fireman by members of the ground crew taking up

proper positions and relaying signals direct to the engineman, even though there is at this place a sweeping left-hand curve. This evidence was not contradicted.

Lefrancois, volume 10, pages 1286 to 1292.

Then, there is Building Products Limited, Exhibit 60. Mr. Lefrancois gave evidence that there was no problem in switching at this location without a fireman and, although cross-examined at length, no evidence was brought to contradict him. This location, the Commission will recall, was visited by them.

Lefrancois, volume 10, pages 1292 to 1301, volume 12, pages 1540 to 1548.

Switching at a good number of other locations was referred to during the time Mr. Lefrancois was on the stand, and I believe the Commission also viewed certain other locations in the Montreal yards, but I believe the ones with which I have dealt are the ones that it was suggested by the Brotherhood, through their counsel, presented the greatest difficulty as to switching without a fireman. In all cases in Montreal, according to uncontradicted evidence of Mr. Lefrancois, switching can be carried on without the fireman. There is nothing in the evidence, in my submission, to support any suggestion that switching at those places without a fireman cannot be done with complete safety and

complete efficiency.

Before concluding my remarks on the Montreal area, I think I may just recall to the Commission the caution, if I may use the word, with which my learned friend approached the yardmaster Johnson, as to the situation in St. Luc, notwithstanding that he and his advisers had been in St. Luc, had made observations and investigations, to meet the evidence of Mr. Johnson.

Now, I come to Toronto. The evidence as to switching at specific locations in Toronto yards was given by the company witness Alver and by Brotherhood witnesses Bell, Baker and Stewart. The first is the Ashbridges bay area. Mr. Alver, in his evidence, and in the bulletin which is Exhibit 79, stated that it was impracticable for signals to be given direct to the engineman when switching at Toronto Elevator Company, Terminal Warehouse Company, Victory Mills and Dominion Malting as well as Harris Glue.

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That, of course, was before the dual control yard diesel was secured and assigned to the area. As I mentioned earlier the Commission saw that unit and saw it in operation and saw the engineman changing sides and remaining in direct contact with his ground crew.

Alver, volume 15, pages 1911-1914.

Leaside, east end, exhibit 201.

Yard Foreman Bell gave evidence that because of the curvature on the fireman's side on the westbound main line at Leaside, it was the practice to use the fireman as a signal passer. He admitted, however, that Engineer Mountsteven refused to take signals from the fireman and that it was possible for the ground crew, by properly positioning themselves, to give signals direct to the engineman. On cross-examination he also admitted that if two or more cuts were taken it would not be necessary to go on to the curve of the westbound main line.

Bell, volume 39, pages 5510-5531 and pages 5570-5576.

During the viewing which took place there on June 17, it was demonstrated that with a move such as Bell had described all signals could be relayed direct to the engineman and that it was not necessary for

a member of the ground crew to go out as far as 30 to 50 yards, as Bell had suggested, in order to give the signal stop.

Union stockyards -- Abattoir,
exhibit 202.

Bell also gave evidence that the fireman was used in switching across Ryding Avenue and St. Clair Avenue into the Abattoir because of the curvature on the fireman's side, the foliage in the park through which the track runs and the necessity of flagging the road crossings. He admitted with short cuts, it would be possible to stop at the crossings and in that case signals could be given direct to the engineman.

Bell, volume 39, pages 5535-5555.

Now, the members of the Commission saw several moves being made at this location on June 17, two of which were with a cut of fourteen cars, the number specified by Mr. Bell, and Bell was a member of the switching crew which performed the switching for the Commission. It was clearly demonstrated that, with the members of the yard crew properly positioning themselves, the movement could be performed without using the fireman for passing signals and, contrary to Bell's evidence it was possible to make a stop with fourteen cars at Ryding Avenue without difficulty. It was demonstrated

to the Commission, as I say with Bell as part of the crew and without any use of a fireman at all, the switching at this location could be done easily and efficiently without the fireman taking any part whatsoever.

Now, Leaside, west end, exhibit 203.

Yard Foreman Baker gave evidence of how switching is done in the departure yard at Leaside with more than 20 cars on the locomotive. He appeared to suggest that if there were no firemen, the engine follower would have to remain on the engine and would not be available to pass signals from the yard foreman to the engineman when backing from the main line up the lead at the west end of the yard. On cross-examination he admitted, however, if the fieldman came up and assisted with the switching there would be no difficulty. There is clearly no need, in my submission, for the fireman to be used as a signal passer in this location, and if switching is performed as it should be performed by using signals direct to the engineman it does not cause any delay of any consequence whatsoever.

Baker, volume 40, pages 5588-5614

and pages 5640-5846.

When the Commission was at the Leaside yards, the Brotherhood agreed that it was not necessary for such a move to be made at this location. Mr. Stewart agreed that the move could be made safely and efficiently in the way the company stated it could be made.

Solway and Sons Limited, exhibit 204.

Baker also gave evidence that because of the scrap piled on the engineman's side on the outside of the curve at Solway and Sons, the engineman could not see a man on top of the cars being pushed on the nose of the engine and it was necessary to give signals to the fireman. On cross-examination he admitted if the area were kept clear so that the ground crew could position themselves properly there would be no difficulty in giving signals direct to the engineman.

Baker's evidence, volume 40, pages 5615-5621 and pages 5647-5655.

The Commission will recall it observed a number of moves at this location and that the signals at all times were given direct to the engineman without difficulty, the men walking with the movement as it came around the curve. They

were all walking on the ground and they could walk there or on top if they preferred. Keeping the area clear of scrap is a matter for the industry and railway if services^{are} to be given on this siding.

The next place the Commission dealt with was the Hydraulic Metal Company, exhibit 205.

Baker said that signals are given on the engineman's side when switching at Hydraulic Metal Company, but the fireman is required to keep a lookout on his side for scrap that may foul the track. When pushing cars into Hydraulic Metal Company, however, a member of the ground crew is on the point of movement for the purpose of keeping a lookout for scrap as well as other things.

Baker, volume 40, pages 5622-5629 and pages 5655-5657.

There is no need for the fireman either as a lookout or as a signal passer at this location and this, in my submission, was apparent when the Commission viewed a move there on June 17 from the bridge. We looked down on the move as it was taken in and taken out. We observed everything, and particularly the way the men handled the move and the way they protected it.

The next is Osler Avenue, exhibit 206.

Baker gave evidence about the use of a fireman at this location. He said he was not used to pass signals but **to serve as a lookout** because of trespassers. He mentioned the company had a man patrolling the track there on account of industry and people trespassing. Baker, volume 40, pages 5629-5636 and pages 5657-5661.

The Commission observed a move at this location on the 19th of June. You will recall on both the backup and the forward movement the three members of the ground crew can easily position themselves to control the movement and warn people who might be in danger. On the forward move when the Commission was there the engine follower did not come up; he stayed back. There is nothing for him to do in staying back and he could easily have gone up. If the engineman had stopped and he wished to take up a position on the front of the engine he could have done so. Obviously on that occasion the engineman was relying on the fireman but there was no way in which he would have assisted the timing of the move ^{if the} /switcher had gone up first.

Keating Street yard, exhibit 210.

That is a place well known to the Commission. On cross-examination of Mr. Alver,

it was suggested very firmly by counsel for the Brotherhood that it would be very difficult to pass signals direct to the engineman when switching at the east end of the Keating Street yard because of traffic conditions there and that if signals were to be given to the engineman a member of the yard crew would have to position himself out in the eastbound traffic lane, and this was followed by evidence of Brotherhood witness Stewart.

Alver, volume 16, pages 2060-2076 and Stewart, volume 41, pages 5699-5707.

When the members of the Commission viewed switching at this location, and indeed took part in switching at this location, the signals were passed direct to the engineman and the moves were made expeditiously and without difficulty. Some of the moves were unusual, not the regular work, but they were all carried out without any difficulty or lack of safety at all. It was obvious that it was not necessary for a member of the ground crew to stand in the eastbound traffic. He was able to pass signals easily from the central boulevard. Moreover, the man who flagged traffic on the westbound lane was able to do so quite satisfactorily from the west or engineman's side of the track.

The Commission will recall a similar situation of flagging traffic from only one side and carrying on as a normal thing and any suggestion that you would have to have one man on each side is, I would submit, untenable.

The next A. R. Clarke Company, exhibit 211.

On cross-examination of Mr. Alver it was suggested by counsel for the Brotherhood that signals were given to the fireman in switching at A. R. Clarke Company on Keating Street. Mr. Alver said that switching at this location could and should be done on the engineman's side.

Alver, volume 16, pages 2076-2083.

During the evidence there was some suggestion that to give signals direct to the engineman could only be done at one point having the signals relayed through a wire fence. Even if signals are relayed through the open wire fence there is no difficulty in doing this, as the Commission saw it when it made its observations on the ground of this location on the 20th of June. Of course the matter is in the hands of the engineman. If the signals are not clear he stops the movement. Special fusees are available for passing signals when there is any difficulty in seeing hand signals.

Smith, volume 60, page 8479.

Several other locations at Toronto were mentioned during the course of Mr. Alver's cross-examination, and still others were viewed by the Commission. Here again, and I believe I have mentioned those which the Brotherhood felt and showed by their questions and requests to the Commission were the ones they considered presented the greatest difficulty.

In my submission it is clear that the evidence and the observations of the Commission establish that a fireman is not required as a signal passer in Toronto anywhere and that moves can be made safely and efficiently without a fireman on the engine.

Now with regard to Winnipeg. The Brotherhood attempted to establish by the cross-examination of Mr. Kelley and by the evidence of their own witness, Engineman Colpitts, that there were certain places in the Winnipeg yards where a fireman is required as a signal passer.

First was the Coach Yard and Winnipeg Depot, covered by Exhibits 220 and 315. The evidence of Colpitts dealt with two areas in Exhibit 220. First, he dealt with drafts of passenger cars being pushed from the Coach Yard through the cross-overs into the depot tracks. He said that because of the curvature on long

drafts of cars it was necessary for the fireman to be used as a signal passer.

Secondly, he dealt with moves at the west end of the Winnipeg Depot and said that the fireman was used as a signal passer because the yardmen worked on the platform side rather than on the grade between the tracks.

Colpitts, Volume 42, pages 5957-5975; Volume 43, pages 6157-6168.

On June 27, the first day the Commission was there, it observed a move in which a draft of passenger cars was pushed from the Coach Yard into the depot, that is through the cross-overs and down from the west end of the depot towards the east end. It was a long cut. The switch tender lined the cross-overs and the movement was controlled by hand signals and the back-up hose. The fireman was not used at all and the movement was carried out expeditiously and, in my submission, safely.

Here again on this kind of movement we have the test conducted by Mr. Smith which shows that the time necessary to push cars from the Coach Yard into the depot at Winnipeg is approximately the same whether the signals are given direct to the engineman or through the fireman. In making the moves

with signals given direct to the engineman there was no difficulty or hazard, according to Mr. Smith. Mr. Smith also said that winter conditions would not affect this.

Smith, Volume 60, pages 8396-8397.

Exhibit 315.

Smith was the man who dealt with Exhibit 315. Then on the next day an observation was made of a move from the Coach Yard through the cross-overs and into the east end of the depot. That was on June 28. The Commission observed switching of cars from the Coach Yard onto the tail end of Train No. 8. On all moves, whether the platform was on the engineman's side or not, the Commission will recall that the yardmen worked on the engineman's side for the purpose of making the final relay of signals. On some of the moves one of the yardmen was on the platform side passing signals through the cars to his mate on the engineman's side.

It was demonstrated that these moves could be made without difficulty without the fireman being used as a signal passer. You will recall that through the carelessness of Engineman Missler an incident occurred which I discussed yesterday. That had nothing to do with signal passing.

The evidence of the Brotherhood in dealing with the handling of passenger equipment both on wyes and in depots overlooked three facts, in my submission. First, where it is necessary back-up hoses can be used to control the movement. Secondly, communicating cords can be used to signal from the point to the engine. Thirdly, vestibule doors can be opened and signals passed through the vestibules by one of the yardmen on one side of the vestibule to another yardman on the other side of the vestibule and by him to the engineman.

At all times in this kind of move the men are on dry platforms, in effect on the inside of the body of the car. There are many ways where difficulties, if there are difficulties, can be met. Normally in this switching around depots it has been demonstrated to the Commission that there is no difficulty in the men positioning themselves on the ground, or that by the use of back-up hoses they can control the movement efficiently and safely. I think the Commission saw only one move where signals were relayed across the vestibule.

Next is G Yard Shed Tracks, Exhibit 221. Colpitts gave evidence

that the fireman is used as a signal passer at this location only when there is a defective pin and the switchman has to go over to the fireman's side to pull the pin. I mention this because it points up another matter. Colpitts said that he had seen this done, that a man could not get the pin from the engineman's side and he would cross over and get the pin from the other side and then use the fireman. Colpitts admitted that the safer practice in a case of this kind would be for the person pulling the pin on the fireman's side to have a member of the ground crew on the engineman's side to pass signals direct to the engineman.

Colpitts, Volume 42, pages 5975-5981; Volume 43, pages 6134-6136.

This is an example of the fireman being there as a convenience, and on the admission of Colpitts sending the signals up the left side results in an unsafe condition.

Mr. Colpitts gave evidence in connection with H and G yard leads, Exhibit 221. He said that when pulling a cut of 35 cars down H yard lead clear of the shed tracks the engine came to where H and G yard leads join and moved west onto Track I-1. When this occurred

Mr. Colpitts said the fireman would get the switch where G and H yard leads converge and would remain there so as to pass signals from the ground crew to the engine-man after the engine had gone onto I-1. He said that the entire ground crew, which consisted of four men, stayed back toward the point where H yard lead comes out of the freight sheds and turns north.

Colpitts, Volume 42, pages 5984-5991; pages 6127-6130.

Mr. McGinn gave evidence on this and said that on occasions the fireman had lined the switch and passed signals as stated by Colpitts, but this was for the convenience of the ground crew. He said, however, that the ground crews had been instructed that where necessary the engine follower was to ride up to the switch, line it and position himself so as to relay signals to the engineman from his mates further back on H lead. Mr. McGinn stated that the switching is not expedited by having the fireman line the switch and become what in effect would be an additional member of the ground crew.

McGinn, Volume 61, pages 8572-8576.

There were two other exhibits filed by Colpitts at Winnipeg, Exhibit 222

dealing with switching in I yard and Exhibit 223, dealing with switching at Rugby Junction.

Engineman Colpitts gave evidence about switching at these two locations. He stated that when he works there his attention is directed ahead and he relies on his fireman to keep a lookout in the direction of the movement and warn him of conflicting movements. I dealt with this matter yesterday, when I was discussing the matter of lookouts. In neither of these instances did Colpitts suggest that the fireman was being used as a signal passer.

Colpitts, Volume 42, pages 5991-6009.

Volume 43, pages 6141-6157.

The Commission made observations at these locations, but no moves were requested by the Brotherhood.

The next exhibit filed by Colpitts was Exhibit 224, concerning the North and South Humps. The only point of Colpitts' evidence was to suggest that the fireman could be useful as a lookout because of the movement of people in that area. He did not suggest that the fireman was needed for any other purpose.

Colpitts, Volume 43, pages 6012-6025.

Volume 44, page 6179.

The Commission, as I stated earlier, saw this location, but again no moves were requested or made.

The next exhibit filed by Colpitts was Exhibit 225 dealing with the east section of B yard. Colpitts said that when switching at the Winnipeg Electric and Gas Works and into the Brown and Rutherford plant, because of the curvature, signals had to be passed to the fireman, although the spotting of cars is done on the engineman's side.

Colpitts, Volume 43, pages 6025-6036.

Volume 44, pages 6179-6181.

The Commission viewed both of these places and it was demonstrated that switching can be done very satisfactorily by the yard crews positioning themselves on the engineman's side or on top so as to give signals direct to the engineman. In fact, at the Winnipeg Gas Works, because of coal piles, the Commission will recall that it was questionable whether the crew could position themselves so as to relay signals to the fireman, without shoving blind at one period. If they positioned themselves to give signals direct to the engineer there would be no shoving blind at all.

On the move at the Brown and Rutherford spur, the Commission will recall that Colpitts said that the fireman was used, that the only way the fireman can be used at that location as a signal passer would be when the yardmen were on top of the cars and where they were just as visible to the engineman as they were to the fireman. Because of the lumber piled along on the open side they would have to be on top of the cars as you come up to the crossing. The crossing was manually flagged. The movement was taken across the avenue into the Brown and Rutherford yard. There is a building alongside and the men have to work on top at that location in order to give signals.

Exhibit 226 deals with Whittier Junction. Colpitts gave evidence that the fireman is required to pass signals when turning coaches at the Whittier Junction wye. In the first part of the movement, as he described it, the cars were brought down the main line which goes to Emerson and at Mission Street the engine follower drops off on the fireman's side and relays the signal for the back-up movement from the men at the rear of the movement to the fireman. He stated that signals were also given to the fireman because of the

curvature when backing up the westward main line.

Colpitts, Volume 43, pages 6036-6054.

Volume 44, pages 6181-6183.

The Commission viewed the movements being made at this location by using the Lac du Bonnet Subdivision as the first leg of the wye and later by using the Emerson main line as described by Colpitts. The Lac du Bonnet movement was as described by Colpitts. In both cases the back-up movement was controlled by means of the back-up hose and it was demonstrated that there is no need to use the fireman as a signal passer. The Commission will recall that the move was stopped, the move was started. The Commission were right beside the back-up hose and saw how it was controlled and worked. Mr. Fraine was working the hose and the communicating cord on the point of the movement and that was the only communication at all with the engineman. No hand signals were given at all.

Exhibit 227 deals with Paddington Yard and stockyards. Colpitts gave evidence that the fireman is used to pass signals when cars are being backed into the sidings of Swift Canadian, Canada Packers

and the stockyards because of the curvature. He said that the switchmen could position themselves so as to give signals to the engineman, but they would have to be some distance from the point of the movement.

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On cross-examination, Colpitts admitted that if necessary the yard engine could be turned on the wye at the Paddington yards, which were close at hand.

Colpitts - Volume 43, pages 6056-6071.

Volume 44, pages 6183-6188.

Colpitts stated in his evidence that he had shoved 35 cars into the stockyards and suggested that in doing this signals had been relayed from a man at the point of the movement to a man at the end of the stockyard buildings and by that man direct to the fireman across the curve.

Colpitts - Volume 43, pages 6061-6066.

When the Commission was in Winnipeg they went to St. Boniface and a movement with 35 cars was observed by the Commission at this location being shoved into the stockyards and all signals were relayed directly to the engineman. It was demonstrated that with this type of cut, 35 cars, it was necessary for the movement to be made slowly because of the long cut, and it was obvious that it would have been better to make the move in two cuts. It would have been under better control and could have been made more

quickly. I also wish to point out that as Colpitts described the move again it is questionable whether it can be done as he described it. The members of the Commission were on the engine and it was pointed out to them, to put it this way, that there would be very great difficulty in looking from the engine across the curve and getting a signal from the man at the end of the stockyard buildings as Colpitts said it was done. If it was done that way, there must have been times when the signals would disappear from view and they would be shoving blind for short periods.

At Calgary through the cross-examination of the company's witnesses, Shepp and Kelley, and by the evidence of Brotherhood witness McKinstry, it was suggested that there were a number of locations at Calgary where a fireman was necessary as a signal passer.

I propose to deal with the locations about which McKinstry gave evidence and those which the Commission was asked to view on July 2 when in Calgary. I think it is fair to assume that these are regarded by the Brotherhood as being the most difficult places in the Calgary yards to switch with signals

being passed direct to the engineman.

The first was the terminal depot, Exhibit 213. Yard foreman McKinstry gave evidence that in stormy, cold weather there is a lot of steam flying about and the ground crew, he said, in switching the terminal depot locate themselves on the platform side and in some cases, he said, this means giving signals through the fireman. He stated, however, that whenever practical they pass signals direct to the engineer.

On cross-examination he admitted that even in stormy weather signals could be given directly to the engineman in all cases if one engine was turned in the other direction, and that this could be done because there were two engines working on the assignment, one switching at each end of the train. He thought this might slow up the movement, as he said later in answer to my friend on re-examination.

McKinstry - Volume 42, pages 5849-5852.

Pages 5916-5923.

The Commission will recall that when it was in Calgary there was a major rebuilding job at the depot and that the tracks, the space between tracks and the whole layout were being changed and the

platforms broadened, with the tracks being set up in a different way. My submission is that there is nothing in this location that supports the contention that a fireman is required. The only time McKinstry said he would use the fireman would be in stormy weather when he wanted to work on the platform side because of steam flying about, and when conditions get to that state I think it is clear that the engine can be turned.

Then there is the Imperial Oil warehouse, Exhibit 214. McKinstry gave evidence that because of the restricted clearance on both sides when backing cars into the Imperial Oil warehouse spur, signals are given on the fireman's side or rather he said that they were given on the fireman's side when he worked there a number of years ago. On cross-examination he was not prepared to say that the move could not be organized so as to relay signals direct to the engineman.

McKinstry -- Volume 42, pages 5852-5860.

Pages 5923-5925.

The Commission observed moves being made at this location with one yardman flagging the crossing and the other two men giving signals direct to the

engineman. It was demonstrated that there are several methods by which this can be done.

The Imperial Oil warehouse is a difficult place to spot cars. It is as difficult as any industrial spot that was drawn to the attention of the Commission or any that people could think of. My submission is that it was clear from the observations and the tests that were made on the ground in the presence of the Commission that the safest way of doing the move is on the engineman's side because this makes it unnecessary for the man who is getting the pin to do so from **between** the cars. You will recall that if he was doing it on the fireman's side there was no way for him to get the pin except to climb down from that high platform and position himself down in between the cars where he could not be seen by the engineman, where he could not be seen by anybody except his mate who was up on the platform, and to get the pin from that point is not, in my respectful submission, as safe or efficient as to get it from the ground on the other side where it can be done quite easily and where the man can walk between the fence and the move. I believe the members of the Commission themselves

walked down between the fence and the move. In any event, if there ever is a time when it cannot be done on the ground on the engineman's side, then, as was demonstrated to the Commission, by placing the ground crew with one of the yardmen riding on the side steps of the diesel on the left-hand side that man could relay signals directly to the engineman by taking the signals from his mates down the platform. I should point out that it is a little more convenient for one of the men to just remain at the crossing and not have to walk anywhere and take part in the switching, but there is no need for him to be at the crossing, and if the move is to be made down the left-hand side and signals given directly to the engineman that man who is just waiting at the crossing with nothing to do can easily ride the engine, get on the steps and pass signals from the left-hand side steps up to the engineman. However, in my respectful submission, that is not the best way to make the move. The best way to make the move is from the ground on the other side direct to the engineman, but if there is ever a case when that type of move on the left side is required then it can easily be done even if a fireman is not there.

I turn now to the Alyth yard, the north wye, Exhibit 215. McKinstry gave evidence that in switching coaches around the wye in the Alyth yard when backing up the leg of the wye marked "B" on Exhibit 215, the fireman is used as a signal passer because of the curve on the fireman's side. He admitted that the back-up hose could be used to stop the movement but stated that when starting up it was the practice to give the signal to the fireman.

McKinstry -- Volume 42, pages 5860-5864.

Pages 5910-5916.

The Commission will recall that it was taken to this location in Calgary. After a discussion, it was agreed that the movement could be controlled by the use of the back-up hose and communicating cord and that the fireman was not required as a signal passer or as a person to assist in the control and safe and efficient movement of a draft of cars in this area. Just as the Commission was leaving the site, however, a movement that was in progress stopped while backing up around the wye.

An investigation was held as to the reason for the stop, conducted by Commission counsel and my friend and the

whole crew. It was found that the engineman by mistake had stopped when the engine follower went out of sight. There was no need for him to stop because the movement was under the control of the back-up hose. It was found that the diesel was also equipped with a communicating cord with which the signal to commence had been given at the station and with which a signal to back up had been given by the yard foreman when the engineman stopped unnecessarily on the wye. The engineman had not been on this job for six or seven years and had never done it, he said, with the communicating cord.

A memorandum dealing with this incident was prepared by Commission counsel and has been filed as Exhibit 296.

In addition to showing how the move can be made safely and efficiently with the back-up hose and communicating cord, I think the point here is that the normal reaction of the engineman was that he stopped when the engine follower went out of view. He obviously expected the engine follower to go wide and he did not go wide and when he did not see him he stopped and the next thing he got was a communicating signal to proceed which he acted on.

I come now to Alyth yard, "N" yard, Exhibit 215. McKinstry also described switching which takes place in "N" yard. He stated that when the tail lead is filled with cars and the switching is done on the north leg of the wye, the fireman is used as a signal passer. He admitted that if the tail lead is kept clear of cars -- and he did not suggest that it could not be -- it would be used and signals would be passed direct to the engineman. As a matter of fact, Mr. McKinstry stated that he would prefer to have the move made in that way.

McKinstry - Volume 42, pages 5864-5867.

Pages 5926-5927.

The Commission was not requested by the Brotherhood to view any switching at this location when in Calgary.

The next is Alyth yard, "O" yard, Exhibit 216. McKinstry said that when shoving cars up the C.N.R. transfer towards the B.A. Oil property in the "●" yard, it was his experience that signals were passed through the fireman because of the left-hand curve.

He admitted, however, that he could pick up a car as a reacher and with it next to the engine there would be no

trouble because the engine follower would then have a place to stand where he could keep in view of the engineman. He agreed with me that this would have been and was the better practice.

McKinstry - Volume 42, pages 5868-5872.

Pages 5907-5910.

The Commission was not asked by the union to view any switching at this location.

Imperial Oil refinery, Exhibit 217.

McKinstry described at some length the switching at Imperial Oil refinery where a four-man ground crew is assigned. He stated that a road switcher at one time had been used at that location and when it was there signals were given to the fireman.

He admitted, however, that the road switcher had been replaced by a yard switcher and that the ground crew are now positioning themselves so that the signals do not go out of sight of the engineman.

McKinstry - Volume 42, pages 5872-5891.

Pages 5901-5904.

G-1
J.R.
J.E.

Mr. Sinclair.

The Commission was not asked to view a movement at this location by the Brotherhood.

The last area in Calgary was the Manchester area, which was Exhibit 316. No evidence was given by the firemen's union about switching at this location, although it was put generally in cross-examination to some of the company's witnesses who said that they didn't know of any place in the Manchester area where difficulty or any hazard was created by passing signals directly to the engineman. When the Commission got to Calgary, the first place it was taken to by the union to observe a move was this Manchester area. The Commission will recall it spent some time watching cars being switched at the Globelite, Rock City Tobacco Company, Quaker Oats Limited and Gorman's Limited. The switching was performed by various methods without using the fireman as a signal passer and again I say it is my submission, successfully demonstrated that this could be done safely and efficiently and the fireman was not necessary to conduct switching in this area, as a signal passer or for safety or for efficiency. Smith dealt with this point and made a test in which a car was spotted at Gorman's warehouse in various ways. There was no advantage from a time standpoint in the use of the fireman as a signal passer. Signals were given direct to

the engineman in a number of ways, and on each occasion the yardmen conducted the move without difficulty and without hazard.

Smith, volume 60, pages 8400 to 8402 and 8406 to 8407 and Exhibit 316.

Now, we come to Vancouver. Very little evidence was given as to switching at specific locations in Vancouver. The company's witness Shepp stated that the only place he knew of in Vancouver where the giving of signals to the fireman might expedite the movement was at the pool elevator, but it was possible, he said, to give signals direct to the engineman at that location. Apart from this evidence, I do not think that any evidence was adduced from the Brotherhood, either as being suggested by cross-examination of the company witnesses or from their own witnesses, to state that firemen are required to act as signal passers when switching on diesels in yard service or that if firemen are not so used, switching cannot be done as safely and efficiently throughout Vancouver terminal area. Mr. Shepp's evidence is to be found in volume 3, pages 391 to 392 and volume 8, pages 940 to 942.

The Commission was not called on to view switching at the pool elevator when we were in Vancouver as a party, although I understand Chief Justice McLaurin was taken there by union

representatives some time earlier; I think that is correct. The Commission, when in Vancouver, however, was asked to observe switching at three locations. The first was the west end of the depot at Vancouver. The move here was to pull five cars from the west end of depot track No. 4, set out two in depot track No. 1 and return three cars to depot track No. 4. I do not think I have to deal with this at length or at all, indeed. A memorandum was prepared by me and was agreed to by my friend as to how the move could be performed, and it was filed as Exhibit 298. It was pointed out in that exhibit that this movement, which the union asked to have done, was very rarely performed in practice because the switching of passenger equipment is normally performed in the yard at the west end of the tunnel rather than at the depot.

The next is the terminal dock area. The Commission were taken down to the terminal dock and, the Commission will recall, that after watching quite a bit of switching there, one of the members of the Commission continued on, shall I say, and was assisting in some switching and we pretty nearly lost him -- not that he was in any danger, but he was working very well. The Commission observed a number of moves at the terminal dock on July 11. The engine moved into S yard and coupled onto cars

pulling them westward through the throat of S and R yards. After the switch was cleared to enable switching to be done into S yard, cars were kicked into the tracks in S yard while the engine was on a left-hand curve. The crew were positioned as follows: the field-man handled the switches and got the pins, giving signals to the yard foreman who was at the approximate centre of the cut on the north side of the roadway, clear of the travelled portion. Sometimes he walked into it, but there was no reason for him to be on the road. He showed he could stand off the travelled portion. This road travels parallel to our yard. The yard foreman relayed the signals to the engine follower who was positioned on top of the first car behind the engine, giving the signals direct to the engineman. After switching was completed, a number of cars were pulled into R yard and backed into the terminal dock over a highway crossing, that move over the highway being manually flagged.

Now that switching was conducted, and the Commission will recall that cars were kicked, cars were pushed and pulled, and yet it was conducted with good rhythm and dispatch and I submit obviously in a safe and efficient manner. The positions that the ground crew took up were not anything that added in any

way to the hazard or difficulty of carrying out the work.

The next point to which the Commission was taken at the request of the union was Cambie Street, and an exhibit was filed on this being Exhibit 317. The Commission will recall that when the Commission got out there there was a large number of trucks in the loading area and rather than ask them all to pull out to do the move which was not necessary as it was just an observation move, it was agreed between my friend and myself that we would wait and have the switching performed and prepare a memorandum. It was done and that has been filed as Exhibit 295. Mr. Lewis agreed that the moves could be made as described in the memorandum, volume 59, page 8239.

Mr. Smith conducted the test at this location under which a fireman was used on one occasion as a signal passer and three other moves were made where all signals were given direct to the engineman. There was no advantage from a time standpoint in using the fireman as a signal passer and Mr. Smith said the ground crew were able to position themselves in a safe manner and give signals direct to the engineman without difficulty.

Smith, volume 60, pages 8402-8403;
pages 8407-8408.

When the Commission were hearing evidence

in Toronto, Mr. Hopkins dealt with Guelph and filed Exhibit 271. This is known as Allen's crossing. I believe that is the only other place referred to in the evidence where it has been suggested a fireman is required as a signal passer in diesel yard service. I think I have covered them all. You will recall Hopkins said because of the curve on the fireman's side at the Canadian National bridge, all signals had to be given to the fireman. He admitted, however, that the yard diesel could be turned on the Y which was quite close, and in that event it would not be necessary to use the fireman.

Hopkins, volume 54, pages 7621-7632; pages 7653-7711.

Now, it would appear that Hopkins was mistaken or confused when he described the move at this location because a test has shown that with ten cars, as Mr. Hopkins stated, and all three ground men at the crossing, a signal cannot be given from the crossing to the fireman as Hopkins stated. In fact, no one on the engine at a distance of ten cars from the crossing can see the yardmen at the crossing. It is necessary for someone to be high on the side of the car, as well as a man back from the crossing, to relay the signals from the crossing to the engineman. A test was carried out with all signals being given direct to the engineman on

the south side and the move was made expeditiously and without difficulty or hazard. The evidence on this matter is in volume 61, pages 8650 to 8655 and Exhibit 349.

Now, that completes my review of the evidence as to how switching is done at the various locations in yards referred to by the Brotherhood in support of their contention that firemen are required as signal passers in yard service. Firemen have been used in the past to pass signals when switching at some locations referred to as a matter of convenience to the ground crew. The evidence clearly shows, however, that in not one of the many locations singled out by the Brotherhood is a fireman in fact required to pass signals, nor has it been shown in any of the places that he is required to be a signal passer to have the move carried out safely and expeditiously.

Mr. Smith said that he had made a recent check and found that yard switching was being carried out in a proper manner in accordance with the bulletin that was issued, and which is filed as Exhibit 273. He said there were some locations in yards where it was necessary to turn the engine, and others where it was necessary to reposition the men, but after consultation on the manner in which the work was to be performed any difficulty was removed.

THE CHAIRMAN: There are, I think, some

- places where a four-man ground crew is used. That situation exists at the present time, of course, with the firemen being present, is that right?

MR. SINCLAIR: I could not hear you, I am sorry sir.

THE CHAIRMAN: There are a number of locations, I think, not more than three and I may be wrong about that, where you use a four-man ground crew for switching purposes at the present time.

MR. SINCLAIR: Yes, my Lord.

THE CHAIRMAN: That situation will not be affected whether or not you have firemen?

MR. SINCLAIR: No, my Lord. I am trying to think of the places. There was the Emory way freight, spoken of by Mr. Alver, and the reason he said they had four was manual flagging of crossings.

THE CHAIRMAN: I am thinking of the places. I think there was St. John's -- I think there is a place at St. John's.

MR. SINCLAIR: St. John's, New Brunswick?

THE CHAIRMAN: Yes.

MR. SINCLAIR: The ones I had in mind were the Imperial Oil, Calgary, one at Winnipeg but there may be one at St. John's.

THE CHAIRMAN: One at St. John's, one at Calgary and one at Winnipeg.

MR. SINCLAIR: And one in Toronto.

THE CHAIRMAN: One in Toronto.

MR. SINCLAIR: Yes, that is the Emory way freight.

MR. LEWIS: I have a memory that there were two such at Winnipeg.

MR. SINCLAIR: I could only remember one at Winnipeg.

THE CHAIRMAN: There were . . . five places, at the moment, you said where dual control engines were used, five locations in Toronto.

MR. SINCLAIR: Yes, that is right, at what was known as the Ashbridges bay area, I think.

THE CHAIRMAN: I do not know how important these things are but I want to be sure of the exactness of them.

MR. SINCLAIR: Mr. Smith in volume 60, page 8461 is dealing with a check he had made as to the fact that there was no difficulty after a few matters were cleared up in carrying out the instructions in the bulletin which is exhibit 273.

Mr. Nichol stated in respect to his territory which is London, that since the bulletin exhibit 273 was delivered on June 7th he had not received any complaints. His evidence is in volume 61 at page 8662.

I would like to discuss for a few moments safety and efficiency.

Company witnesses expressed the opinion that not only is a fireman not required as a signal passer but that switching operations can be carried on in yards more safely and efficiently when signals are passed direct to the engineman.

Mr. Shepp expressed the opinion that if signals are given direct to the engineman they will be responded to immediately and there is less likelihood of a heavy coupling. He pointed out that an engineman can respond quickly to a hand

signal from a member of the ground crew, whereas a verbal signal from a fireman may not be heard. He also pointed out that firemen are less well qualified than are members of the ground crew to give signals because it is not part of their normal duties as it is part of the normal duties of members of the ground crew. Shepp's evidence is at volume 4, pages 432-433 and at volume 9, page 1074.

Brotherhood Witness Colpitts admitted in his cross-examination that he had heard of cases of a fireman calling across the cab to the engineman and the engineman not hearing him. That is Colpitts' statement in volume 43 at page 6140. He also said in answer to the chairman this kind of a situation can result in an accident.

Mr. McGinn gave evidence of an incident involving Fireman Olsen where this occurred. That is McGinn, volume 61, pages 8556-8559 and pages 8576-8580.

Now, in my submission, Mr. Chairman and members of the Commission, it is perfectly apparent that the relaying of signals by calling to the engineman is not a satisfactory method of passing signals. Quite apart from the danger of the engineman not hearing the signals at all or not hearing them clearly,

the various degrees of speed and distances that the signal passer wishes to convey to the engineman cannot be indicated as clearly by verbal instructions as by hand signals or lamp signals.

In a series of bulletins which he issued in the latter part of 1956 and the early part of 1957 in the Toronto Terminals, Mr. Alver pointed out that by relaying signals direct to the engineman -- and I am using his words -- "more prompt responses to signals will result" and this will help to prevent damage to freight. In his evidence Mr. Alver expressed the opinion that the situation would be improved in yards if the fireman was removed because the ground crew would then take up their proper positions which they were not at all times doing.

Exhibits 76, 78 and 79 and Alver, volume 15, pages 1901-1913 and pages 2002-2003.

Now, Mr. Fraine expressed the opinion that giving signals through the fireman is always an undesirable practice. He pointed out that if signals are relayed sometimes on one side and sometimes on the other, the first thing is you don't know who is giving the signals and you get into

difficulties. That is Fraine, volume 19, pages 2519-2520.

A number of Brotherhood witnesses also expressed the opinion that the best and safest practice is to pass signals direct to the engineman.

Yard Foreman Baker stated that as far as he was concerned, he liked the engineer to be looking at him when he ^{giving} was/signals. He agreed that the best practice for switching is to give signals direct to the engineer. That is Baker, volume 40, page 5639 and page 5661.

Engineman Stewart also agreed that the best switching practice is to give signals to the engineman. That is Stewart, volume 41, pages 5832-5834.

Yard Foreman McKinsty stated there is no doubt that the best and the safest possible practice in switching is to pass signals direct to the engineman and he liked to work direct to the engineer. He also mentioned that in dealing with the Calgary depot wherever it was practicable he always did that.

On more than one occasion during the course of his cross-examination of company witnesses, I understood Mr. Lewis to state that he had no quarrel with the

idea that it is desirable to give signals directly to the engineman. He stated that it was obvious that if the engineman is to go by your signals it is better he get them direct. He had no quarrel about that.

Lewis, volume 7, page 820 and volume 16, page 2044.

There was some suggestion, however, in the evidence of Brotherhood witnesses that if the fireman was not used as a signal passer certain yard movements might be somewhat slower and this might affect the efficiency of yard operations.

At an earlier stage of my argument I dealt with a similar suggestion when considering whether the removal of the fireman as a lookout would affect the efficiency of yard operations. The Commission will recall I reviewed at that time the evidence of company witnesses that in none of the principal yards of the company would additional assignments be required if firemen were removed from diesels in yard service.

I merely remind the Commission of this evidence because I think it is quite clear that the possibility, and that is all it is, of the odd move having to be done more slowly in yards if the firemen were

removed is not an objection which is of any substance.

In the observations of the Commission and the tests conducted by Mr. Smith and Mr. Nichol, in my respectful submission it is demonstrated that the use of a fireman as a signal passer does not expedite the movement nor does the giving of signals direct to the engineman involve hazard for the yard men. It has been suggested by Brotherhood witnesses that if firemen are removed from diesels in yard service, it will be necessary for members of the ground crew to get on top of cars more frequently and that this will cause an additional hazard.

The evidence of company witnesses is that getting on top of cars to pass signals is not hazardous if proper practices are observed. The company's records indicate that fewer accidents occur to yard men falling from tops of cars than to firemen when taking on coal and water. The reference here is Shepp, volume 8, page 928 and volume 9, pages 1051-1052.

Now, members of the Commission have had many opportunities to observe yard men going on top of cars to pass signals or to put on or release handbrakes on cars while

switching at the various yards and will have noticed how much a normal part of a yardman's work that is. In view of the speeds at which cars are moved while being switched in yards, I think it must have been apparent to the Commission that going on top of cars does not constitute a hazard to a man who has in his mind where he is and that he is working under conditions where he must conduct himself in relation to his circumstances.

THE CHAIRMAN: I suppose the only point there is ice and snow.

MR. SINCLAIR: Yes. Ice and snow, and when that occurs there is evidence on the record that if it gets bad enough further practices must be taken into account. They must go down and cut down the size of the cuts and carry on in that way if it gets so slippery that there is any hazard in being on top of cars. I will deal with this in a minute and give you the reference.

If firemen were removed from diesels in yard service it would not result, in my opinion, in yardmen having to go on top to pass signals in many locations where they are not already going on top either to apply or to release brakes or to pass signals. They have to be up there in any event. I think it is of some significance that employees who were conducting switching in two of the

tests dealt with by Mr. Smith expressed a preference for going on top of cars rather than remaining on the ground or side of the car to conduct the switching move. That is Smith, volume 60, page 8417 and page 8437.

Brotherhood witnesses admitted that it was a common occurrence for yardmen to go on top of cars, but emphasized the dangers resulting, from extreme weather conditions and ice on cars during the winter months. That is Bell, volume 39, pages 5532-5534 and page 5578 and McKinstry, volume 42, pages 5892-5893.

Mr. Smith has had considerable experience in working and supervising operations in western Canada and has met heavy snow, freezing snow, icing and the other conditions which can occur in the Canadian winter in British Columbia, in sunny Alberta or in Quebec. In dealing with the various tests he made in western Canada, Mr. Smith expressed the opinion that winter conditions would not affect his statement that signals could be given direct to the engineman without difficulty or hazard. That is Smith, volume 60, page 8394, pages 8407-8408 and page 8469.

THE CHAIRMAN: We will adjourn at this point.

--- The Commission adjourned at 12.30 a.m. until 2.00 p.m.

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Tuesday,
October 29, 1957.

AFTERNOON SESSION

---The Commission resumed at 2.00 p.m.

MR. SINCLAIR: I was dealing with the question of slippery and icy conditions with heavy snow getting on top of cars. As I say, Mr. Smith dealt with this based on his long experience in Western Canada. In my submission, obviously when visibility is restricted by extreme weather conditions, and when footing is difficult because of ice, normal methods of switching cannot be followed and it may become necessary, for example, for a particular move to be made by taking shorter cuts. What normally would have been done in one cut may have to be done in two or even three cuts. This of course would be the situation whether a fireman was employed or not.

A condition so extreme as to create a real hazard, something that would require these very extraordinary measures, in my submission is an exception. It will not often occur and all it amounts to is delay. If safety requires delay, then delay must be taken. Occasionally time must be considered in operating a

railroad and safety becomes part of those considerations.

That brings me to the end of my summation on the question of the evidence relating to whether a fireman is required, in sense of Question No. 1, as a signal passer. In my submission, to put it shortly, the evidence demonstrates clearly that the work of switching in yards can be done without using the fireman as a signal passer when the members of the yard crew position themselves properly. It is my submission that the evidence supports the view that it is a safer and better practice for the fireman not to be used as a signal passer, but for all signals on all occasions to be relayed directly to the engineman by the ground crew.

Although in the past in some locations in yards firemen have undoubtedly been used to pass signals, in my respectful submission this has been only for the purpose of convenience for members of the crew. On a widespread system such as the Canadian Pacific proper switching practice is always a difficult matter to supervise. In order to stamp out this loose practice the system-wide bulletin to which I have referred was issued by the company requiring that the

work be so arranged by yardmasters and yard foremen that the crews would be able to position themselves so that the proper and safest switching practice will be carried out at all times.

THE CHAIRMAN: What is the number of that document?

MR. SINCLAIR: 273. Now the third of the four items I mentioned yesterday was mechanical assistance, yard.

The third of the four purposes for which it was suggested the fireman is required on a diesel in yard service was to give mechanical assistance. I do not think that the Brotherhood are placing this forward very strongly, that a fireman is required to give mechanical assistance on diesels in yards. Therefore I can cover this rather quickly.

In my respectful submission there can be no doubt whatever that a fireman is not required to give assistance in cases of mechanical failures on yard diesels. Mr. Woodland pointed out that yard switchers are fitted with a ground relay, low lubricating oil shutdown, and engine overspeed, but there is no alarm in connection with them. He went on to say that there is a shop or a maintenance staff at all points where diesel yard

engines are assigned and when an engine shuts down for any cause the shop is usually called. In any event the shop staff is available in the area.

Woodland, Volume 24, pages 3236-3237.

Woodland also explained that yard diesels are taken out of service for eight hours for an inspection every month and at the end of every two years' service they are put into the shop for a complete overhaul.

THE CHAIRMAN: Taken out of service for eight hours every month?

MR. SINCLAIR: That is right, and a complete overhaul every two years. He said that it is very unusual to have a yard diesel held for inspection or repair at any other time than the eight hours assigned per month.

Woodland, Volume 25, pages 3263-3264.

Both Mr. Shepp and Mr. Kelley expressed the opinion that the fireman has no mechanical duties on a yard diesel. In cases of trouble the maintenance staff is called to deal with it.

Shepp, Volume 4, page 497.

Kelley, Volume 13, page 1625.

Brotherhood witnesses Post and

Stewart gave evidence about the inspections which are carried out by firemen when commencing their duties on yard diesels. On reading their evidence I do not know whether they intended to suggest that firemen were required to make these checks or to carry out these inspections, but if that was their intention I do not think that it can be justified.

Post, Volume 38, pages 5354-5355.

Stewart, Volume 41, pages 5739-5741.

THE CHAIRMAN: When you say not required, do you mean the company does not require it?

MR. SINCLAIR: That it is not required in the sense of being necessary for proper operation, or required by the company, or required for safety, or required in the proper functioning of diesels in the yard.

Some of the checks which Mr. Post said the fireman makes are the responsibility of others.

THE CHAIRMAN: Was that evidence given in connection with the subject matter of arbitraries?

MR. SINCLAIR: Yes, sir, and I am going to deal with that specifically. I am just dealing with mechanical assistance by indicating the evidence

they gave, but I shall deal with arbitraries more fully later on.

The fireman is not required to see that the diesel is properly equipped and supplied with fuel, lubricating oil, water or sand. That is the responsibility of the shop staff.

Exhibit 7, pages 6 and 10.

Some of the other checks described by Mr. Post are in fact required to be made by the engineman of the yard diesel, but these, in my submission, can easily be made by the engineman without the fireman's assistance.

Brotherhood witness Doull agreed that the checks which the engineman is required to make are such that both the engineman and the fireman are not needed. He stated that while at present both do certain things, the engineman alone could do those things if there were no fireman.

Doull, Volume 38, pages 5310-5311.

The observations made by officers of the company of yard operations and filed as exhibits, clearly show that very little is done by the fireman by way of checking equipment when going off or coming on duty. I will deal with that in my argument on arbitraries sometime later. These summaries are set out in Exhibits 55, 62,

69 and 81.

That is all I have to say about the use of firemen to give mechanical assistance. My submission is that it is quite clear that the fireman is not required in yard service for that purpose.

The fourth purpose that I stated earlier was seizure or blackout.

THE CHAIRMAN: Of the engineer?

MR. SINCLAIR: Of the engineman, yes. I think this is the only other purpose for which the Brotherhood have suggested that firemen are required on diesels in yard service, that is to assist in the event that an engineman suffers a seizure or blackout or for some other reason becomes so ill that he cannot stop the diesel. The company's position is that a fireman is not required on diesels in yard service for this purpose. In my submission, they are not needed because in yard service the diesels are moving at slow speeds and are in close touch with the ground crew. In any event, the company's experience indicates that a seizure or blackout is an extremely rare occurrence.

The evidence is that the operating speed in yards is up to six miles an hour. This speed is exceeded on movements between yards, but on such

moves members of the yard crew ride the diesel and are able to deal with an emergency, if necessary. On transfer moves, as the Commission has seen, one of the ground crew rides in the cab. On movements between sections of a yard there is one groundman on the diesel, generally on the front.

Shepp, Volume 3, page 379.

Alver, Volume 15, pages 2023-2028.

Mr. Woodland pointed out that yard diesels move at very limited speeds and that it had been his experience that ground crews were in close contact. He thought that on very rare occasions when something might happen to the engineman, nothing of more consequence than a heavy impact would be involved. In view of this he did not think there was any need of having a dead-man control on yard diesels, although he saw no technical reason why they could not be installed.

Woodland, Volume 25, pages 3341-3342.

THE CHAIRMAN: Have you anything to say about the policy of the company in that respect, or the intentions of the company?

MR. SINCLAIR: Yes, I have, and I would refer to Mr. Emerson.

THE CHAIRMAN: You are just coming to that?

MR. SINCLAIR: That is right. Mr. Emerson, who is a senior operating officer of the company, gave evidence. He said he did not believe it necessary to have dead-man controls on yard diesels because in yard service the movements are made at slow speeds with the engineman working in close conjunction with the ground crew.

Emerson, Volume 32, pages 4522-4523.

Mr. Lefrancois, at Volume 11, page 1335, and Mr. Kelley, at Volume 13, page 1633, also stated that in their opinion yard diesels do not require to be equipped with dead-man controls if firemen were removed.

Mr. Alver was the only officer of the company to suggest that if firemen were removed from diesels in yard service it might be well to have dead-man controls.

He said he would want it -- and I am using his phrase -- "as an extra precautionary measure".

Alver -- volume 15, pages 2016-2017.

I do say to the Commission that Mr. Alver is a very experienced yardman and his opinion is certain worthy of great weight, but other people, also with long experience, as is sometimes the case in these matters, have a different view. The Commission really has from the Canadian Pacific both expressions, the view of Mr. Alver who says yes and the view of some of these other men who say that deadman controls are not needed.

Mr. Gonder of Canadian National did not think the movement in yards was fast enough to warrant having deadman controls if the fireman were removed. He thought, he said, that any collision which might occur if something happened to the engineman would be minor in character because of the speed. He went on to say that he thought it was a most remote possibility that a yard diesel might move out on to the main track if something happened to the engineman.

Gonder -- volume 30, pages 4231-4233.

As the Commission knows, some of the yard engines operated by European railways without a fireman are equipped with dead man controls and some are not. Mr. Emerson dealt with this matter and he said it appeared to be just a matter of local practice.

Emerson -- volume 32, page 4526.

Dead man controls are in operation on yard diesels in England and in Germany. There are no dead man controls on yard engines in France, Holland or Switzerland.

Emerson -- volume 31, page 4370 (Germany).

Page 4354 (England).

Page 4355 (France).

Exhibit 180-A (France).

Page 4380 (Switzerland).

Koster -- Volume 5, page 607. (Holland)

Exhibit 180-A is the memorandum of Mr. Lewis and myself.

THE CHAIRMAN: That evidence accords with our observation, does it, when the Commission made this trip?

MR. SINCLAIR: That is right.

THE CHAIRMAN: I assumed it would but I just wanted to be clear.

MR. SINCLAIR: At the request of the Brotherhood, a very intensive search

was made of the files of Canadian Pacific to find out how many cases there had been of enginemen suffering seizures or blackouts while on duty in the eleven years, 1946 through 1956. The results of this investigation of the files are set out in exhibits 109, 109-A and 109-B. In those exhibits the cases have been divided into cases where the seizure or blackout occurred when the engineman was operating an engine and cases where it occurred when he was on duty but was not operating an engine.

In the whole of that eleven year period, 1946 through 1956, the only two cases of an engineman suffering a seizure or blackout when operating a locomotive of any kind in yard service are cases four and five in Part A of exhibit 109-B.

In the first of these two cases, Engineman Mottley, on October 2, 1948, had an epileptic seizure while moving a yard diesel at Vancouver and the fireman brought the engine to a stop. Mottley had been restricted to yard service because of his physical condition.

Had the fireman not brought this movement to a stop, in my submission it is quite probable that one of the members of the ground crew would have done so. In any event, the worst that could have happened

would have been a slow moving impact.

The only other case in which an engineman suffered a seizure when operating a locomotive in yard service in this period of eleven years is the case of Engineman George Kennedy which occurred on January 10, 1950, at Toronto. While Kennedy was making a backup movement with a light transfer steam engine, he suffered an epileptic seizure and the fireman brought the engine to a stop.

In this case the engine was moving light to pick up the yard crew at the commencement of the yard crew's shift. If firemen are not employed on yard diesels, a member of the ground crew would be with the engine from the commencement of the engine shift.

The Commission will note that in both of these instances men with epilepsy were involved. When I discuss the question of seizure and blackouts in road service, I will deal with incidents involving diabetics and also some heart conditions, but in the yards they were both epileptic seizures.

THE CHAIRMAN: You say in this kind of case if there is no fireman the engineer would be accompanied from the shop to the place where the engine starts to work by a member of the ground crew?

MR. SINCLAIR: That is right. There

is evidence that the engine was moving to John Street, I think it was John Street, and the crew was meeting it a little farther away.

The company, as is shown from exhibit 109, has followed the practice on occasion of assigning men to yard service who were not too well. If necessary the medical requirements could be stiffened. In any event, the evidence shows that since 1954 epileptics are not employed on the Canadian Pacific in the running trades and the present policy is that diabetics taking insulin will not be employed in this work.

Smith -- volume 60, pages 8476-8477.

In addition to the two cases on Canadian Pacific, Brotherhood witnesses gave evidence of two cases which occurred in the United States of an engineman suffering a seizure or blackout while operating a locomotive in yard service.

Brotherhood Witness Flanagan told of a case which occurred in April, 1957, near Ashtabula when an engineman by the name of George Frey died of a heart attack while operating an engine in yard service and the fireman stopped the engine. The move was that he had just delivered a

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cut of cars to an industry off the main line and presumably was returning light.

Flanagan -- volume 44, pages 6262-6264.

Flanagan was not there when the incident occurred and did not say where the members of the yard crew were at the time whether they were there or where they were, but in the circumstances he described at least one member of the yard crew would have been and should have been on or near the diesel and would have been able to bring it to a stop.

Brotherhood Witness Tucker gave evidence about an incident which occurred in yard service at Denver, Colorado, in January of 1956 where an engineman by the name of Pittage died at the controls and the fireman took over and stopped the move.

Tucker -- volume 45, pages 6366-6367.

Mr. Tucker's information was based on the union's files. No evidence was given as to where the engine's ground crew were at the time or whether any member of the ground crew was in a position to stop the engine, in the case referred to by Brotherhood Witness Tucker, if the fireman had not been in the cab. My submission with respect to the incident referred to by Mr. Tucker is the same as my comment regarding the one referred

to by Mr. Flanagan.

In the light of this evidence of seizures or blackouts suffered by enginemen while operating diesels in yard service, it is obvious that they are an extremely rare occurrence. Only two incidents have occurred in Canadian Pacific yard service in eleven years. Both of these were epileptics. The Brotherhood witnesses have only brought to the attention of the Commission two cases which have occurred in United States yard service on the railways of that country.

In view of the slow speeds at which diesels in yard service operate and having regard to the fact that they operate under the close control of the yard crew, it is unlikely, in my submission, that in any of the four cases mentioned anything of serious consequence would have resulted had there been no fireman.

THE CHAIRMAN: Are these American cases in the same period as the Canadian cases?

MR. SINCLAIR: No, one of them went over into 1957, sir.

THE CHAIRMAN: Well, was the starting period the same?

MR. SINCLAIR: Oh, I do not know how far they went back in their search.

THE CHAIRMAN: For Canada it was 1946 to 1956.

MR. SINCLAIR: That was the C.P.R., but the firemen did not say what period they checked. They just brought these two cases to the attention of the Commission. I do not know how far back they checked. If one was in 1956 and one was in 1957 I would not think they went back to 1946. I do not know. They were in those two years.

THE CHAIRMAN: All right.

MR. SINCLAIR: Now, the experience of Canadian Pacific certainly, in my submission, does not support any suggestion that a fireman is required on a diesel in yard service in order to take over from the engineman in cases where the engineman suffers a seizure or blackout.

Indeed, I submit that the evidence indicates that the possibility of an engineman suffering a seizure or blackout when operating a locomotive in yard service is really so remote as not even to justify equipping yard diesels with dead man controls if firemen are removed. As I have already mentioned, there is a difference of view about that in the yard evidence of Canadian Pacific witnesses.

THE CHAIRMAN: We have evidence of the expense entailed.

MR. SINCLAIR: Yes, I did make a note of it. It is not very much.

HON. MR. McLAURIN: \$750. Is that a figure that we heard?

MR. SINCLAIR: Mr. Woodland says yes.

HON. MR. McLAURIN: As far as your company is concerned, the only one who has come forward and has said in effect, we think we should have them, is Alver.

MR. SINCLAIR: Yes.

HON. MR. McLAURIN: And Mr. Woodland, your expert in that field, said, "Well, if we should have to have them there is no technical difficulty about doing it."

MR. SINCLAIR: That is right. This concludes my review of the evidence relating to the operation of diesels in yard service and, for the reasons I have given, I do not think that the evidence supports the contentions of the union that a fireman is required on diesels in yard service to act as a lookout, to act as a signal passer, to give mechanical assistance or to be available to assist if an engineman suffers a seizure or blackout when operating a diesel.

I think the evidence really supports the views of the officers of the company who are responsible for the safety and efficiency of operations in the company's yards, and that is that firemen are not required on diesels in yard service either in the interest of safety or efficiency.

Now, I wish to deal with diesels in road freight service. I think first of all I should say a few words of general introduction. The opinion of officers of the company who are charged with the responsibility of operating diesels in road freight service safely and efficiently is that a fireman is not required on such diesels, either for safety or efficiency.

When a diesel is operating in road freight service, there is at the present time in the cab of the diesel an engineman, a fireman and a headend trainman. If the fireman were removed, there would still be two men in the cab of the diesel while it was travelling over the road. The only time when the engineman would be alone in the cab would be while switching en route at which time the headend trainman would be on the ground on some occasions assisting in the performance of switching.

In other words, if the firemen were removed from diesels in road freight service

there would be two men in the cab of the engine at all times while the train is travelling over the road just as there are at the present time, only two men in the cab of a diesel in passenger service while it is travelling over the road. While the diesel is carrying out switching en route, there would be at times only one man in the cab, just as there would be only one man in the cab of a diesel in yard service if the firemen were removed.

Stated generally, the company's position is that there is no more need for a fireman to be in the cab of a diesel in road freight service while travelling over the road than there is need for a third man to be in the cab of a diesel in passenger service; and, further, that there is no more need of a fireman to be in the cab of a diesel in road freight service while switching en route than there is for a fireman to be on a diesel in yard service. The firemen on diesels are merely duplicating the work of other members of the crew. That duplication is set out in Exhibit 106 where the duties of a fireman and head trainman in steam and diesel are set out and compared.

At an earlier stage of my argument I referred to the opinions expressed by the president of the Canadian Pacific, Mr. Crump, and by the vice-president of operations and

maintenance, Mr. Emmerson, that firemen are not required on diesels for the safety or efficiency of road freight service.

Mr. Fraine, general manager of the eastern region of the Canadian Pacific also expressed the opinion that firemen are not required for the safe or efficient operation of freight trains with diesel power and he stated that the fireman has no function to perform on the locomotive that is necessary to be done by him.

Fraine, volume 18, pages 2351-2353.

Mr. Fraser, general superintendent of the Alberta district, stated that in his opinion the fireman performs no useful purpose on a diesel-powered freight train and that he is not required for the safety and efficiency of operation.

Fraser, volume 20, page 2677.

Mr. Crate, acting superintendent of the Sudbury division of the Canadian Pacific, a former engineman and fireman, could see no difficulty arising if firemen were removed from diesels in road freight service. Indeed he thought the removal of the firemen would be a move for the better.

Crate, volume 23, pages 3068-3069.

Mr. Youngs, a road foreman of engines for the Quebec district, was of the opinion that the fireman did not add to the safety of

road freight diesel operations.

Youngs, volume 24, page 3157.

Mr. Hooley, road foreman of engines at Vancouver, expressed the view that firemen are not required on road freight diesels in the British Columbia district for efficiency or safety and pointed out that at present there is only the engineman on the right side and he did not see the necessity for two men to be located on the left side of the engine.

Hooley, volume 31, page 4324.

Other company witnesses expressed substantially similar views and I do not think it is necessary to relate them all.

In considering the opinions of these men I again emphasize that they are the opinions of the men who are themselves responsible for insuring that the operations of the company are carried on safely and efficiently. That is their obligation, that is their duty. For that reason I think the members of this Commission, in arriving at their own conclusions on this question, are entitled to attach much weight to the opinion of such men.

Now, the position of the Brotherhood is that firemen are required on diesels in road freight service for safety and efficiency, generally speaking. In support of their position they have suggested that firemen are

required for a number of purposes that show they are needed for safety and efficiency. It would appear from the evidence that they regard the following to be the most important purposes which a fireman serves on diesels in road freight service. If the evidence is analysed it will be seen that these are exactly the same as were put forward for yard service, namely that a fireman is to act as a lookout, act as a signal passer when switching en route, to give mechanical assistance, and to assist in the event of the engineman suffering a seizure or a **blackout**.

There is other evidence in this part of the case from Brotherhood witnesses on which, I think, they put less stress. Nevertheless they might be suggested as purposes for which the fireman is required to serve on the railway, and I will deal with those as well. The four I have mentioned specifically appear, however, to be the ones regarded by the Brotherhood as being the most important. I do not attempt to list them in order of importance; I merely put them in the same order I followed in connection with yard operations.

Now, I wish to deal with lookout on the road. When I dealt with this subject,

with the fireman as a lookout in yard service, I referred to the evidence which was given regarding the firing duties of firemen on steam locomotives in yard service. Evidence was also given of the firing duties of firemen on steam locomotives in road freight service.

The purpose of that evidence was to show that the fireman on steam locomotives in road freight service served, at best, as a part-time lookout. The extent to which a fireman was available to act as lookout depended upon a number of factors, such as the work being done, the length of the train, weather conditions, grade conditions, size and steaming qualities of locomotive, and the quality of the coal being used. That the fireman was on the deck a substantial amount of time is, I think, a fair assessment of all the evidence. On hand-fired locomotives the times ranged up to 100 per cent. He was available for lookout much more of the time on a stoker than on a hand-fired locomotive, and much more again on an oil burner than on a stoker. No matter what type of steam locomotive, however, the fireman was not available for lookout duties to the same extent as the head trainman. On this evidence was taken from letters from the Brotherhood. I have a number of references: Crump, volume 35, page 4870; Crate, volume 22,

pages 2992-3001; Youngs, volume 24, pages 3142-3149, Exhibit 120B; Stewart, volume 41, page 5776; Colpitts, volume 42, pages 5946-5948, volume 43, pages 6163-6170; Exhibit 199; Exhibit 228. .

However long the time may have been that a fireman spent on the deck or engaged in other firing duties on the various types of steam locomotives, it is quite clear that he ~~would~~ have firing duties on steam locomotives which engaged some of his ~~time~~ and left him less free to act as a lookout than he is on a diesel. Steam, of course, is and was used on passenger as well as freight.

THE CHAIRMAN: That is not disputed, but the evidence was directed, as I understood it that wherever there was a place where a fireman should be looking out such as at a crossing or something of that kind he regulated his other duties accordingly and that it is not necessary on the road for the fireman to be looking straight ahead at all times. There is nothing to look for except the crossings or for signals or something like that.

MR. SINCLAIR: Of course, Mr. Chairman, I will not go into all the references. However, Stewart said in evidence, at page 5776:

Well, sir, Toronto to the other side, east of Myrtle, I would say you would be on the deck about 70 per

cent of the time.

Q If you got fine coal or
bad coal it would go up?

A Not a great deal, sir.

Q In other words, you are saying
that you would be there 70 per
cent of the time because it is --

A I would say that that is the
maximum, but from that point in
the route as far as Peterborough
I would say a man would not be
on the deck more than maybe just
10 per cent of the time."

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THE CHAIRMAN: Well, there is lots of evidence of that kind and lots of percentages but the impression I got from the evidence was that so far as the union witnesses were concerned it was directed, as I say, towards establishing that without any need for the fireman to be looking ahead he always was there and that was the proper practice.

MR. SINCLAIR: There was some of that evidence but Stewart himself said **there** were times when he never looked at all and there was the exhibit from the Brotherhood that I filed that said when he is running on an engine he does not have the chance to see a signal. So **what** it gets down to, Mr. Chairman, is that there was some evidence on both sides -- from the company as to the disability of firemen and also from the firemen's union files or the company's files and letters from the union but Stewart was one I happened to remember myself.

THE CHAIRMAN: Your main point is there is a man apart from the fireman on the left-hand side who has nothing else to do but look out all the time

MR. SINCLAIR: That is right.

THE CHAIRMAN: That is the substance of it?

MR. SINCLAIR: Yes sir, and the second

point that comes out of it with a passenger train is simply that the fireman was not there and was on the deck a very large proportion of the time and that that did not necessitate the appointment of another man to keep a lookout. Those are the two points I wished to make. That is why I mentioned passenger service.

Now, one of the reasons given by the Brotherhood witnesses for suggesting that a fireman is necessary to act as a lookout is that the fireman is able to keep a lookout ahead while the headend trainman is looking back during inspection.

Now, this suggestion or reason would only be valid if the head trainman were unable to keep an effective lookout ahead while making his train inspection.

THE CHAIRMAN: I am sorry, I was making a note. What was this point?

MR. SINCLAIR: The suggestion was made that a fireman had to be there on a freight engine to keep a lookout ahead on the left-hand side while the head trainman was making his train inspection. My point was that this could only be valid if the head trainman could not do his inspection and maintain an effective lookout ahead so far as that was necessary.

Now, the evidence, in my submission, clearly shows that an adequate lookout ahead can be maintained and is in fact maintained by the

trainman when making inspection.

THE CHAIRMAN: I suppose you go again to the passenger train illustration, the difference that there probably are more cars on a freight train than a passenger.

MR. SINCLAIR: That is right, but my main point on this is that the time to make an inspection is not as long as one would expect if they had not seen it done. Now, the evidence -- and there is a lot -- that is that these inspections take from a quarter of a minute to around a minute. That is the company's evidence based on actual observations. A number of the company's witnesses were asked about procedure in making running inspections of the train and the members of the Commission, of course, have had the opportunity of seeing how this was done by engine crews but the opinion of company witnesses is that the head trainman while carrying on a running inspection on his train can glance ahead at intervals so as to keep a proper lookout ahead and there can be no doubt that the trainman is fully qualified to keep a lookout ahead and in fact that has always been his primary duty. That is the evidence of Fraine, volume 17, pages 2245, 2246 also volume 19, page 2419, Fraser volume 20, page 2616, 2617 and also, of course, Exhibit 106.

THE CHAIRMAN: The European railways

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did not seem so far as our short observations are concerned to place much emphasis on running inspection?

MR. SINCLAIR: There is the odd one, I think, that did. When we were going up on one of the runs in Switzerland I think the fellow was making the odd inspection. I think Mr. Justice Martineau was on the engine at that time. The fellow was glancing back.

Of course, Mr. Lewis says station personnel do that but that, of course, is so with every railway. As a train passes a station or passes a section force they are required to make an inspection as the train goes by. That happens on our railway as well as any European railway.

THE CHAIRMAN: There are more stations in Europe per mile than in Canada, I suppose that is different?

MR. SINCLAIR: That is right. Now, the main point on this, Mr. Chairman, I think is this. Under the rules of Canadian Pacific the engineman is required to make running inspection on the right side and no one goes over to his side to keep a lookout ahead for him when he is making his running inspection behind.

Now, if there is no need for a lookout ahead while the inspection is being made and that lookout ahead had to be kept by a second

person it would be certainly, I think, more important that it be kept over on the engineer's side when he was looking back than it would be over on the left-hand side.

THE CHAIRMAN: Does the head trainman make running inspections on both sides or one side?

MR. SINCLAIR: He makes them on both sides, sir. He makes them on the left side and when he does the right side he simply goes over and makes them on the right side. I will have something more to say about that. I have a note about inspections made on the engineer's side but when an engineman is making his inspection on the right-hand side as he is required to do he does not call the head trainman over to keep a lookout while he, the engineman, looks back.

THE CHAIRMAN: Is this right, the only time you can profitably make a running inspection on your side whichever side you are on is when the train is on a bit of a curve, would that be right?

MR. SINCLAIR: Yes, generally speaking I think it is, a bit of a curve, yes.

THE CHAIRMAN: Then, when there is an opportunity to make a running inspection from the engineer's side, when there is a curve, if the head trainman is over there he and the engineer must be making the inspection at

the same time

MR. SINCLAIR: Well, of course, the observations have been made that that is not the way they do it. The head trainman sometimes comes over and sometimes he does not. The engine-man makes it himself.

THE CHAIRMAN: But if he comes over they must be both doing it at the same time because that is the chance to do it?

MR. SINCLAIR: That is right and as a matter of fact the evidence is -- and I will be referring to that and will give you the page numbers -- that when inspection is being made on the left side time and again when the head trainman is looking back a fireman will look back too. That is a normal reaction. If I am sitting behind you and you look back I look back too and that is why I say there is not much in this point.

THE CHAIRMAN: If that is so I wonder why the company would ask a head trainman if there was no fireman to keep a lookout out the right side because you would have two people doing the same job at the same time?

MR. SINCLAIR: Well, the engineman might by his actions not want to turn around.

THE CHAIRMAN: If the engineer was not going to do it, yes, but if they were both going to do it I cannot see the point in that.

MR. SINCLAIR: I agree with you, sir, that

there is no use of them both doing it together.

THE CHAIRMAN: But you say now they do?

MR. SINCLAIR: They both do, yes. It seems kind of-- I am not saying they both turn back on that side at the same time. I am saying their evidence is they do it first on the left-hand side but I think the head trainman does make inspections on the right-hand side when the engineman is not making inspections on the right-hand side but there are lots of times from the observations of the company and particularly I recollect the trip exhibits of Mr. Woodland that the head trainman never went over to the right side at all.

THE CHAIRMAN: I am not speaking as to what he did or did not but I am speaking only of the proper practice and if we are agreed -- is there a rule?

MR. SINCLAIR: Yes, there is a rule, Exhibit 27. It is the second paragraph of rule 111 which is found at page 66 and it says:

When practicable employees on a moving train must make frequent inspection of freight trains to insure that it is in order and when the freight train stops the trainman will be in a position to inspect the train as it pulls by.

THE CHAIRMAN: Well, what I have in my mind, Mr. Sinclair, is simply the practical thing and again I don't know what the mechanics of it are but if we are agreed that the engineer is obligated to make running inspections on his side and the proper time to do that is when he can do it to advantage, when there is a tail-end of the curve to his left, that is the time when the head trainman, if he is making an inspection of the right-hand side, can do it usefully, but they are both doing it at the same time and it is a doubling up. If the engineer doesn't do it then perhaps he is not carrying out the rules, if he lets the head trainman do it for him. I am trying to get at the operating sense of the thing, that is all.

MR. SINCLAIR: I think that is right, sir. I think the way you put it is so but I will say this that while the best time to make running inspections is on curves I think that is over-stating it to say that that is the only time that a running inspection can usefully be made. I think that gives you a better sweep of your train but you can still see back for fire or smoke even on tangent track.

THE CHAIRMAN: That is so.

MR. SINCLAIR: I don't think you have that in mind.

THE CHAIRMAN: No. At the present time when you have three men in the cab the tendency

is for one to look back when someone else is looking back and you have that repeated on both sides of the train. Perhaps if there were only two there their function might be divided up.

HON. MR. McLAURIN: As an amateur assistant superintendent why shouldn't the exclusive function of inspecting the train be the trainman's and leave the engineer to running the train?

MR. SINCLAIR: I don't think you could do that, sir. I think the engineman has to have a share of responsibility for making the inspections as much as the head trainman has.

THE CHAIRMAN: When he can do it without interfering with his lookout ahead.

MR. SINCLAIR: That is right, sir, just the same as an officer on an engine has some responsibility when he is there to see that the train operates in accordance with the rules and everything else but when he is not there the train still operates in accordance with the rules etc.

THE CHAIRMAN: All right, perhaps we have exhausted that subject.

MR. SINCLAIR: Now, Engineman Doull in answer to my question said that when he is making a running inspection as an engineman he is able to maintain an adequate lookout ahead although he said that his inspection might not be made as thoroughly as it would by a man who

is devoting his entire time to studying the train.

Doull also admitted to me that it does not take long to see whether there is smoke or dust indicating some defect in the running gear or a hot box. That can be picked up very quickly. I am sure the Commission while they did not have any hot-boxes on any of their actual trips they could from their own observations have seen how quickly you might have observed something like that by swinging your head back.

Doull's evidence is volume 30, pages 5300 and 5301.

MR. SINCLAIR: If an inspection is made on the right-hand side when the curve is the engineman's curve and the head trainman comes over, then my position is that the curve, being to the right, if somebody is alone on the left, all he can see is the country because of the cant of the engine. The Commission have seen that as it goes around a curve to the right the engineman because of the geometrical angle that that leans, by looking ahead cannot get a complete view. Therefore at that time the man on the left-hand side on that kind of a curve can see nothing ahead because of the engine. All he can see is out.

THE CHAIRMAN: You are speaking of a road switcher?

MR. SINCLAIR: A road switcher running long end forward. If it is running short end forward, of course there is a difference.

THE CHAIRMAN: The new ones run short end forward?

MR. SINCLAIR: That is right. When you run the short end forward there is very little obstruction at all on either side. What I said is that when men look back to see, they look back together. I think I should give some

reference to that. That is Fraine, Volume 17, page 2247; 2264; 2269.

As to this later point I was making about inspection on a curve on the engineman's side and the head trainman coming over, Fraser dealt with that at Volume 20, pages 2627 and 2628.

Several Brotherhood witnesses maintained that an extra pair of eyes are required on the left side of an engine. Brotherhood witness Hobbs stated that he hoped that the day will never dawn that he will have to move in the territory he has to work in "without having that extra help, that needed extra pair of eyes on the left side of the cab at all times."

Hobbs, Volume 52, pages 7368-7369.

The short answer, of course, is that at the present time freight trains are operating safely with only one pair of eyes on the right-hand side of the locomotive, and passenger trains are operating safely with only one pair of eyes on either side of the cab.

Brotherhood witness Sanders agreed on cross-examination that one man on each side of the cab is sufficient for lookout purposes.

Sanders, Volume 50, pages
7182-7183.

Brotherhood witness Tucker pointed out that on some road switchers in freight service on the New York Central one of the three seats is in the middle of the cab of the road switcher where the person sitting on it is unable to keep a lookout ahead at all. He went on to say that on some other railways in the United States the head trainman is not in the cab of the locomotive at all. In such cases only one man would be available to keep a lookout ahead on either side of the engine. That is in freight service.

HON. MR. McLAURIN: On each side?

MR. SINCLAIR: Yes, on each side.

Tucker, Volume 44, pages 6330-6331.
Volume 45, pages 6407-6409.

The Commission will recall that Mr. Russell referred in one of his trip reports to an incident which occurred on a diesel on the Canadian Pacific in which there were only two seats in the cab, one on each side. He said the head trainman and fireman tossed a coin to decide who should have the seat on the left side, and

when the head trainman lost he sat on a box in the centre of the cab with his back to the direction of motion.

Exhibit 123, page 10.

In his next trip report Mr. Russell noted that the fireman took his lunch back to the second unit and ate it while the train was travelling over the road a distance of some 30 miles.

Exhibit 123, page 11.

In my submission these incidents are some indication that the men themselves do not think that two of them are required to keep a lookout on the left side.

It was also suggested by some Brotherhood witnesses that a fireman is required as a lookout on diesels in road freight service so as to be available when the head trainman is off the diesel while switching en route. Conductor Brunner was one of the witnesses and he referred particularly to movements on left-hand curves.

Brunner, Volume 46, page 6514.

The answer to this suggestion is the same answer as I have given already in dealing with switching in yards. If there is no fireman on the engine and the engine-man while switching has not got a sufficient view of the track ahead of his movement he

must not proceed without having a member of his train crew in a position to provide a lookout ahead.

Fraine, Volume 19, pages 2481-2482.

I think I have dealt with all of the reasons given by Brotherhood witnesses in support of their contention that a fireman is required as a lookout on diesels in road freight service. I would like now to deal with specific incidents to which they referred in support of their view that a fireman was needed for lookout purposes.

Brotherhood witnesses gave evidence of various incidents in which a fireman warned the engineman of some danger in road service. The position being taken by the Brotherhood is, I gather, that these incidents show that the fireman is able to avert accidents or to reduce the damage caused by accidents and is therefore required as a lookout on diesels in road freight service. In order to get any support for their position from the evidence of these incidents, each incident must, in my submission, be tested by asking this question:

"If firemen were not

"employed on diesels in road freight service is it more likely that there would have been an accident in the circumstances described?"

If this test is put, all incidents which occurred in passenger service should, of course, be eliminated because the company is not proposing that the fireman be removed from diesels in passenger service. But I do think it is worth while to look at these incidents for which the Brotherhood searched and which they brought forth to the Commission.

Brotherhood witness Doull stated that an incident was avoided in 1951 at Moose Jaw when he, acting as fireman, warned the engineman of an approaching car which, he said, was loaded with people talking together and paying no attention to the train. That was a passenger train, not a freight train. He referred also to a much similar incident which occurred north of Regina, but he could not recall in what year it occurred.

Doull, Volume 37, pages 5129-5130.

Volume 38, pages 5304-5307.

THE CHAIRMAN: Where was the trainman, does he say?

MR. SINCLAIR: That was a passenger train; one was a passenger train,



but he could not recall very much about the other, as I remember his evidence.

Doull referred to an incident in 1954 when he was riding a diesel as Road Foreman of Engines approaching Saskatoon. He said the fireman yelled to the engineman that there was a car racing for the crossing and, according to Doull, the engineman was able to slow his train down enough to miss the car.

Doull, Volume 37, pages 5130-5131.

In that case Doull who was then an officer under the rules had a responsibility on the engine -- Exhibit 27 -- to have the head trainman in position in the cab. It must be assumed that the head trainman was in position in the cab at that time and could, in my submission, have warned the engineman had there been no fireman present.

Doull referred to another incident in 1954 when he was acting as Road Foreman of Engines. This occurred when a freight train was stopped at Curle, which is the Moose Jaw yard, waiting for the switches to be lined for the main line. He said that when the head trainman was lining the switch the fireman saw two children crawl under the train some cars back and warned the

engineman not to move.

Doull, Volume 37, pages 5132-5133.

From the facts related by Engineman Doull it is problematical whether the train would have moved before the children themselves would have moved clear. However, as I said in regard to the incident in the yard at Lethbridge involving a yard crew, the company is taking all reasonable precautions in regard to infant trespassers.

On account of curvature the crew cannot see the full length of the train at times before starting. While it would be possible to have enough men to check every train at every location before it moved to see that there were no trespassers, particularly infant trespassers, crawling between or under the train this, in my submission, is not reasonable and the action of firemen dealing with trespassers, including children, while it is highly commendable cannot be used as a basis for an employment not otherwise justified.

Doull referred to an incident in 1950 when he was running with a caboose hot, that is an engine and caboose only, near Swift Current. He said that as they



rounded a curve at 45 miles an hour his fireman yelled to him to stop because of a track motor. He claimed he was able to slow down enough to give the section men time to get the track motor out of the way.

Doull, Volume 37, pages 5133-5134.

The head trainman was on the engine and in position to give any necessary warning, although in this case the fireman apparently called first.

Brotherhood witness Post described an incident which occurred when going through Rigaud on the way from Montreal to Ottawa. He noticed a young girl approaching the crossing who seemed to him to be paying no attention to the whistle signal. He, as fireman, knowing that the application of the brakes would do no good because they were travelling at 65 to 70 miles an hour jumped from his seat and grabbed the whistle cord and gave short blasts on the whistle, thereby warning the girl just in time. The train involved was Train No. 1, The Canadian. That was a car body A unit, 1400 class, so therefore both he and the engineman would be sitting up there.

Post, Volume 38, pages 5370-5371.

The Commission will recall that in his statement to the company superintendent the engineman said that as the engine approached the crossing at Rigaud he commenced to sound the whistle and ring the bell. As it drew closer the engineman said he saw a girl about 16 years of age walking westward on the shoulder of the track on the engineman's side. He continued to sound the whistle and made a brake application. While he was in the act of sounding the whistle the engineman said Fireman Post jumped from his seat, grabbed the cord out of his hand and gave several short blasts. He then went on to say that the girl very nonchalantly continued to walk on the shoulder of the track until she reached the highway, at which point she turned off to the right in a very casual and unexcited manner.

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Mr. Sinclair

I don't know and I don't think anybody will ever know what actually happened on this occasion but certainly I think the only conclusion that can be drawn from it is that the engineman did see the girl. She was right in front of him on his side. There was nothing in his view. He was sounding the whistle, he was living up to the requirements, and it may well be that the girl did see him. On the other hand, if she did not see him there is no reason to suggest she would not have got clear before the train got there, and again it is a passenger train.

Harris -- Volume 61, pages 8699-8702.

Exhibit 354, pages 8727-8732.

Post -- Volume 38, pages 5370-5371.

Brotherhood witness St. Germain described an incident which occurred on May 1, 1957, while on a road switcher doubling over the Prescott way freight in the yard at Ottawa. Smith, the Ottawa yardmaster, stepped out in front of the engine and walked along the tracks in the same direction as the train. St. Germain was the fireman and he shouted to the engineman to hold it. He claimed that the engineman was looking back at the time



and had not noticed Mr. Smith.

St. Germain - Volume 38, pages
5393-5397.

Pages 5399-5410.

Fireman St. Germain said that diesel inspector McClean was on the diesel at the time. Mr. McClean in rebuttal dealt with this incident. He said that they were moving two or three miles an hour when he heard the fireman call. He was standing back of the throttle stand, that is, towards the centre of the cab, facing the engineman. McClean moved over to the fireman's side and looked out and saw Yardmaster Smith crossing the track about 15 to 20 feet ahead of the locomotive. McClean said he was just crossing the south rail and would have been clear before the engine had reached him. Mr. McClean did not think there was any incident involved. He later was present when the superintendent spoke to Yardmaster Smith. Smith said he knew of the movement and was very much surprised that the matter was brought up at all.

Mr. Lewis in cross-examination tried to suggest that crossing 15 feet in front of a slow-moving locomotive was hazardous for Smith. It must be remembered that Yardmaster Smith is an

experienced man around railway equipment and would be in no more danger, in my submission, crossing 15 feet in front of a locomotive moving slowly than would a person say crossing 15 feet in front of an automobile moving at the same slow speed. How common it is for all of us to go safely across in front of cars moving slowly at three, four or five miles an hour. That happens every day and it is one thing that I think the Commission might very well take judicial notice of if they have not had the experience themselves.

THE CHAIRMAN: I suppose we can take judicial notice of the fact that the footing on a street is better than on a railway track.

MR. SINCLAIR: Well, I have walked on some streets that are not too good. You have got to go up and down curbs. I walk up here every day --

THE CHAIRMAN: We are not speaking of the exceptional one.

HON. MR. McLAURIN: You have been in Ottawa too long.

MR. SINCLAIR: I certainly agree with that, my lord. Certainly there are good walking streets but certainly there is also good walking in yards, and especially

there is good walking if you know how to walk in yards.

THE CHAIRMAN: I suppose it is a question of familiarity and that is the point you are making?

MR. SINCLAIR: That is the point I am making.

McClellan -- Volume 61, pages 8673-8683.

Fireman St. Germain also described an incident which occurred on a freight train coming down the Gatineau with a load of logs. He said he noticed two youngsters with their heads down on the rails listening for the train. He shouted to the engineer who tried to stop and blew the whistle and the youngsters moved.

St. Germain - Volume 38, pages 5397-5398.

My submission in that regard is that a good many of us at least have done this very thing. The youngsters were listening for the train by putting their ears down on the rails. It is hard to believe and I think it is a little fantastic to expect anyone to believe that the boys when they have their ears down there listening for the train do not know that it is coming. It is hard

to believe that this is a type of incident they would bring forward to suggest that the fireman averts an accident when the boys are there, see the train coming, and put their ears down to listen to it. I do not think that they had any suicidal tendencies or that there is any suggestion of that.

Engineman Stewart described an incident which had been related to him and he said it occurred -- he was not there -- on November 18, 1956, on an extra west from Trenton to Toronto. There was a road switcher and an A unit on the train when a draw bar was pulled on the A unit. On that occasion the fireman operated the road switcher back to Cobourg and then with the A unit going back end ahead on the head of the train, the fireman stood at the point of movement, said Stewart, in the back end of the A unit while going from Cobourg to Toronto.

In cross-examination Stewart agreed that the fireman could not have been acting as a lookout on the trip from Cobourg to Toronto because he had no means of passing signals to the engineman and that the head trainman in the cab of the A unit must have been used for this purpose alone.

Stewart - Volume 41, pages 5725-5730.

Pages 5819-5825.

This is another example of the crew themselves indicating that only two men are required. In any event, this was a most unusual situation and undoubtedly advantage was taken of the fireman being on the locomotive to assist in moving the damaged unit to the terminal without having to set it out at the point of occurrence. The fireman was merely used to ride what became the front of the locomotive and he had access to an emergency valve to protect against anything untoward happening at a crossing. The train, in fact, was operated by the engineman in the cab and the head-end trainman without any assistance from the fireman as to lookout. While the presence of the fireman, as I said earlier, did avoid the necessity of setting out the diesel unit, if he had not been there that unit could have been set out and I do not think this incident can in any way justify the carrying of a fireman on a freight locomotive to be used on the rare occasion when a draw bar is pulled in such a way that a unit has to be set out or they have to be run backwards.

Stewart - Volume 41, pages
5725-5730.

Pages 5819-5825.

MR. LEWIS: You gave that reference before.

MR. SINCLAIR: Oh, I am sorry. Brotherhood witness Tucker described an incident which occurred in the summer of 1956 when he was moving a light engine in the Lasalle Street depot at Chicago for a train to Elkhart. He said he was warned by his fireman to stop when a switchman on a car on an adjacent track was struck and knocked underneath Tucker's engine.

Tucker - Volume 45, pages 6343-6344.

As Lasalle Street depot is a passenger terminal exclusively, Mr. Tucker presumably was moving a passenger engine and, therefore, I do not think I need to deal with this incident further.

The second incident described by Tucker also involved engines from a passenger train.

Tucker - Volume 45, pages 6344-6346.

Of course, under our proposal passenger locomotives would still have two men on them, freight locomotives coming from or going to the trains would have the engineman and a trainman, and yard engines would have the engineman

and the ground crew.

Brotherhood witnesses Inglis and Foster both described an incident which occurred on March 20, 1957, when Inglis was acting as fireman and Foster as engineer on a freight train. During a switching movement while making up the train at Megantic, the train had moved very slowly over the crossing, had been flagged over the crossing, when Inglis saw a young lad on railway property in front of the engine tugging at something. He warned Foster to stop and the young lad freed his bicycle and left. The brakeman had flagged the movement but had gone back and foster was watching for signals from the rear when he was warned to stop by the fireman. He said he had looked ahead but had not noticed the boy. The engine bell was ringing.

Inglis - Volume 48, pages 6862-6867.

Foster - Volume 48, pages 6868-6871.

This is my submission. No doubt if the engine had not stopped the boy would have jumped clear and his bicycle might very well have been damaged. In any event, leaving the fireman's action aside, all reasonable precautions had been taken. The

boy had gone on railway property around an engine blocking a crossing to try to get ahead of it. My only comment is that saving a bicycle from being damaged is commendable, no doubt, but surely it cannot be used to justify the employment of firemen.

Brotherhood witness Lancaster described an incident which occurred in 1943 at Pauls Valley, Oklahoma. He said he was fireman on an engine which was backing across a main street crossing with cars on the nose of the engine when he saw a car approaching from his side and warned the engineer. A second warning was necessary before the engineer applied the brakes in emergency but the car was struck. The engineer at the time was watching the ground crew who were with the cars on the nose of the engine.

Lancaster - Volume 49, pages 6930-6931.

The evidence does not show whether this was a diesel or a steam engine. Taking the date, 1943, as given by the witness Lancaster, and the type of run, in all likelihood it was a steam engine. If it was a steam engine, of course, backing, that is moving tender

first, the engineman's view would be blocked by the tender from observing traffic approaching from the fireman's side. On a yard diesel, of course, moving cab first the engineman has an unobstructed view. Where his view is obstructed, where it can be on a road switcher in certain movements depending on how the engine is moving, if he was backing over the crossing a trainman would have to be in a position, if there was no fireman on the engine, to make the necessary observations and to signal to the engineman with regard to traffic on the highway.

Mr. Chairman, it is very hot in here. I wonder if I could have three minutes' recess.

THE CHAIRMAN: Do you mean three?

MR. SINCLAIR: I mean three.

---Recess.

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--- After recess

MR. SINCLAIR: The next road incident set out in the evidence was that described by Lancaster. He said it was related to him and occurred in road service in July 1956 at Shopton, Iowa. The road engine was coming off the roundhouse track and about to take a cross-over into the train yard. The brakeman had lined the switch for this movement and given a come-ahead signal. The fireman saw a yard engine approaching and wanted the engineman to stop, but there was a sideswipe. Lancaster did not see the incident, but acted on behalf of the fireman in attempting to get his demerit marks reduced. Apparently the fireman had not warned the engineman as soon as he should have.

Lancaster, volume 49, pages 6940-6941.

This is a case where a brakeman had a duty and failed to carry it out. As I have said earlier, employment of firemen cannot be justified on the basis of seeing that other employees carry out their duty. As mentioned earlier, such a sequence could go on forever.

Brotherhood Witness Wade described an incident which occurred, according to his

information, on January 11, 1957 at Latta Indiana. He said that Fireman Dove called to his engineman to stop when he saw the brakeman slip when attempting to climb on the left side of the diesel on a freight train before the headend of the train pulled away from the yard office. Wade volume 49, pages 7053-7054.

From the facts described, the engineman should have made certain as to the location of his head trainman before moving the diesel away from the yard office and taking the headend of his train toward the far end of the yard.

Wade also described another incident related to him which occurred near Buffalo Iowa on May 26, 1956, when Fireman Close warned his engineman of a car on the track ahead. It was a passenger train and was going 69 miles an hour at the time. Wade claimed it was able to slow down sufficiently to enable the car to get off the crossing in time. The engineer, ^{he} said, was not looking ahead at the time as he should have been. That is Wade, volume 49, pages 7056-7058.

That was a passenger train and, therefore, is not an incident which is relevant to the question being considered,

even if the failure of the engineman to maintain a lookout is disregarded.

Conductor Sanders described an incident which occurred in the Kamloops yard in April, 1957. He said the engine had four cars and was moving over a road crossing and going to double on to other cars to make up the train when the fireman warned the engineman of a car coming from his side. Sanders, volume 50, pages 7167-7171.

Had there been no fireman, the engineman before entering the crossing would have had a member of the ground crew on the locomotive or been in a position to warn him of highway traffic.

Engineman Hobbs described an incident which occurred early in 1956 at Kamloops. The head trainman lined the switches and gave a proceed signal when the fireman warned him not to move because three youngsters had crawled under the train.

Hobbs, volume 51, pages 7311-7313.

I have already dealt with the question of infant trespassers in my comments concerning the incident at Lethbridge referred to by a union witness and at Moose Jaw and that would also apply in this case.

Hobbs also referred to an incident related to him which occurred on August 22,

1955 at Glacier when Trainman Martin was about to get train orders from the fireman's side when he slipped and fell to the station platform. The fireman called to the engineman to stop and went back to assist Martin. Hobbs suggested the injury would have been much more severe had the fireman not warned the engineman, but this appears doubtful because, according to the statement of the fireman, Martin was found on the station platform, that is, clear of the train, being attended to by the station operators.

Hobbs, volume 51, pages 7316-7320 and volume 52, pages 7430-7433.

~~Sheflin, described a crossing~~ accident which occurred when two yard diesels coupled together were operating on a freight train on the Canpa subdivision near Toronto at exhibition time in 1956. Sheflin stated they had been stopped, but upon receiving a signal from the tower to proceed, were about to move on to the crossing when the fireman saw a car coming from his side and warned the engineman to stop. The car was hit, but according to Sheflin the damage would have been greater had the train been going any faster.

Sheflin, volume 53, pages 7569-7573.

You will recollect I dealt with this matter in rebuttal evidence and when I was cross-examining Mr. Sheflin I informed the Commission that this file had been in the hands of counsel of the Brotherhood and I did not have it with me. However, when I had Mr. Smith on the stand I had him file a statement taken from the engineman and also from Sheflin at the time of the accident. The engineman said he saw the car, and he said "Just as the fireman started to shout",

he made an emergency application of the brakes as he could not detect that the car was slackening speed. Trainman Sheflin's statement was, the fireman called "Soak her, he's not going to make it", and at that instant brakes were applied in emergency. I think two statements clearly show that the engineman had the matter under control irrespective of any action taken by the fireman on that occasion. The exhibits are exhibit 333 and 334; those are the two statements.

Brotherhood Witness Fraser described an incident which occurred in March 1957, when a train leaving Toronto for Hamilton was stopped on track no. 1 while waiting for signals by a Canadian National engine on track no. 2 to its left. The switch tender lined the switch for the Canadian Pacific engine and gave a hand signal which the Canadian National engineer

mistook for a signal for him. Both engines started ahead. When the fireman on the Canadian Pacific engine saw the Canadian National engine moving ahead he warned Engineman Fraser to stop. A sideswipe resulted in some damage to the Canadian National tender. According to Fraser there was \$25/^{damage}to the Canadian Pacific engine.

Fraser, volume 55, pages 7838 - 7843, and Fraine, volume 19, pages 2468-2470 and volume 20, pages 2608 - 2611.

Mr. Fraine pointed out to Mr. Lewis at page 2610, the Canadian Pacific train is a passenger train and the fireman was there. If it had been a freight train there would have been the trainman there.

Fireman Desbois described an incident which occurred on March 31, 1957 when a freight train with a four-unit diesel locomotive was going into a siding at Eureka. As they were going around a left-hand curve he saw a sectionman with a pushcar loaded with furniture on the track and warned the engineman. He claimed there was also a small child on the pushcar. The head trainman was in the cab at the time, but Desbois claimed he was inspecting the train at the time and for this reason did not see the pushcar.

Desbois, volume 55, pages 7845-7847.

The investigation of this accident has been made by the company and the investigation discloses that the section foreman saw the train enter the siding and promptly shoved the pushcar into the back track and relined the switch for the siding. Although the front wheels of the pushcar derailed at the frog, he is certain he would have had ample time to re-rail the pushcar and get it into clear even if the train had not stopped. He says that his daughter, who was with him, was standing clear on the path to the north of the back track.

The head trainman said he saw something on the track when they were about 12 carlengths into the siding and he is not sure whether he or the fireman called the engineman's attention to it.

The engineman says, referring to the section foreman, he was an experienced man and would have run towards them and have given stop signals had there been any doubt in his mind that he might be struck. The head trainman also confirms this. The engineman says the whole incident was of no consequence.

Haddow, volume 61, pages 8596 - 8603 and exhibits 343, 344 and 345.

Fireman Good described an incident

which occurred on February 21, 1957 when two road switchers with 80 to 90 empty cars which had left Kenora were approaching a road crossing. Good hollered to the engineer to blow the whistle again and this, caused he claimed a woman who was carrying a log of wood to jump back from the track and the train missed her. Good stated the head trainman was checking the train on a left-hand curve at the time, suggesting the trainman did not see the woman.

Good, volume 57, page 8043.

On cross-examination, Fireman Good admitted the engineman might have been going to give another blast on the whistle so as to comply with rule 31. In any event, the important point is that the trainman's version of this incident does not coincide with Fireman Good's. You will remember, through Mr. Smith I introduced the statement of head Trainman Craig dealing with this incident. He said he was looking ahead, saw the woman and shouted to the engineman at the same time as Fireman Good.

Exhibit 235, Smith, volume 60, pages 8509-8512.

The next incident is in the evidence related by Fireman Baker. He said it occurred at three o'clock in the morning of April 26 at Kenora. He was on an engine which was moving light to the shop track after yarding its train when he saw two men walking down the track in the same direction as the engine and yelled to the engineer to stop.

Baker, volume 57, pages 8050-8055.

My comment on this is that if there had been no fireman, the head trainman would have accompanied the light engine to the shop and would have been in a position to give the warning which Baker gave.

Engineman Gwynn, in a brief which he read to the Commission, referred to an incident which was related to him and which occurred on the Sutherland subdivision on June 3, 1957 when a student brakeman was riding the ladder on the left side of the tender of a steam engine on a way freight as it was approaching the loading platform at the stockyards. He was standing in such a position that he would have been struck about the knees by the platform, but the fireman warned him and he moved.

Gwynn, volume 58, pages 8106-8107.

pages 8118-8119.

The way freight on this occasion was being hauled by a steam engine and, as Mr. Smith said in evidence, with the type of diesel

used on way freights it would be impossible for the student brakeman to have been in a position where he could have been struck by the loading platform. He would have been riding the side steps clear of the platform.

Smith, volume 60, pages 8512-8513.

Gwynn also referred in his brief to an incident related to him which occurred at Yorkton on May 16, 1957. Gwynn said the fireman warned the engineman of a small girl who wandered onto the track from the left side.

Gwynn, volume 58, page 8109.

This matter has been investigated by the company and the engineman states that both the head trainman and the fireman were on their seats approaching Yorkton at the time of the incident and that both the head trainman and the fireman saw the little girl and both shouted to stop.

Smith, volume 60, pages 8513-8515.

Exhibit 336.

Gwynn referred to an incident related to him which occurred at Wynyard when a fireman on an engine making up his train in the yard noticed a car coming out of a track, No. 3. He shouted to the engineman and the movement was stopped with the car touching the engine.

Gwynn, volume 58, page 8109.

As Gwynn explained, this was a road crew working in the yard making up a train

with a steam engine. There is nothing in the evidence to suggest one of the trainmen working as part of the ground crew could not have been in position to give the warning and take the action that the fireman did. If the situation had arisen with a diesel working without a fireman, one of the trainmen would have been in a position, either on the engine or at the lead, to make the necessary observations before the engineman came out onto the lead and to the fouling point of track No. 3. That is a case of coming out on a lead with a left curve.

Trainman White in the brief he read to the Commission described an incident which occurred to him in March, 1949 at Kananaskis. He was setting a brake when it released and he was thrown from a car. He claimed that the fireman was the only person to see him fall and that by warning the engineman the fireman saved his life.

White, volume 58, page 8125.

pages 8131-8133.

My comment is this, that the car on which White was working was next to the engine and was standing still at the time he fell. White admitted in cross-examination that before a signal is given the ground crew should know where each of the trainmen is. In any case, the movement of the engine would have been away from White and not towards him.

Furthermore, this incident happened a number of years ago -- 1949. Mr. Smith was able to locate a statement given by White to the company shortly after the accident occurred. At that time White's recollection of it would be clearer than it was in 1957 when he was preparing his evidence for this Commission. White's statement given in 1949 shows that he did not then think anyone had witnessed his fall. If the fireman had witnessed it and had taken the action which White now thinks he did, I suggest it was a matter that he would have recorded in his statement in 1949.

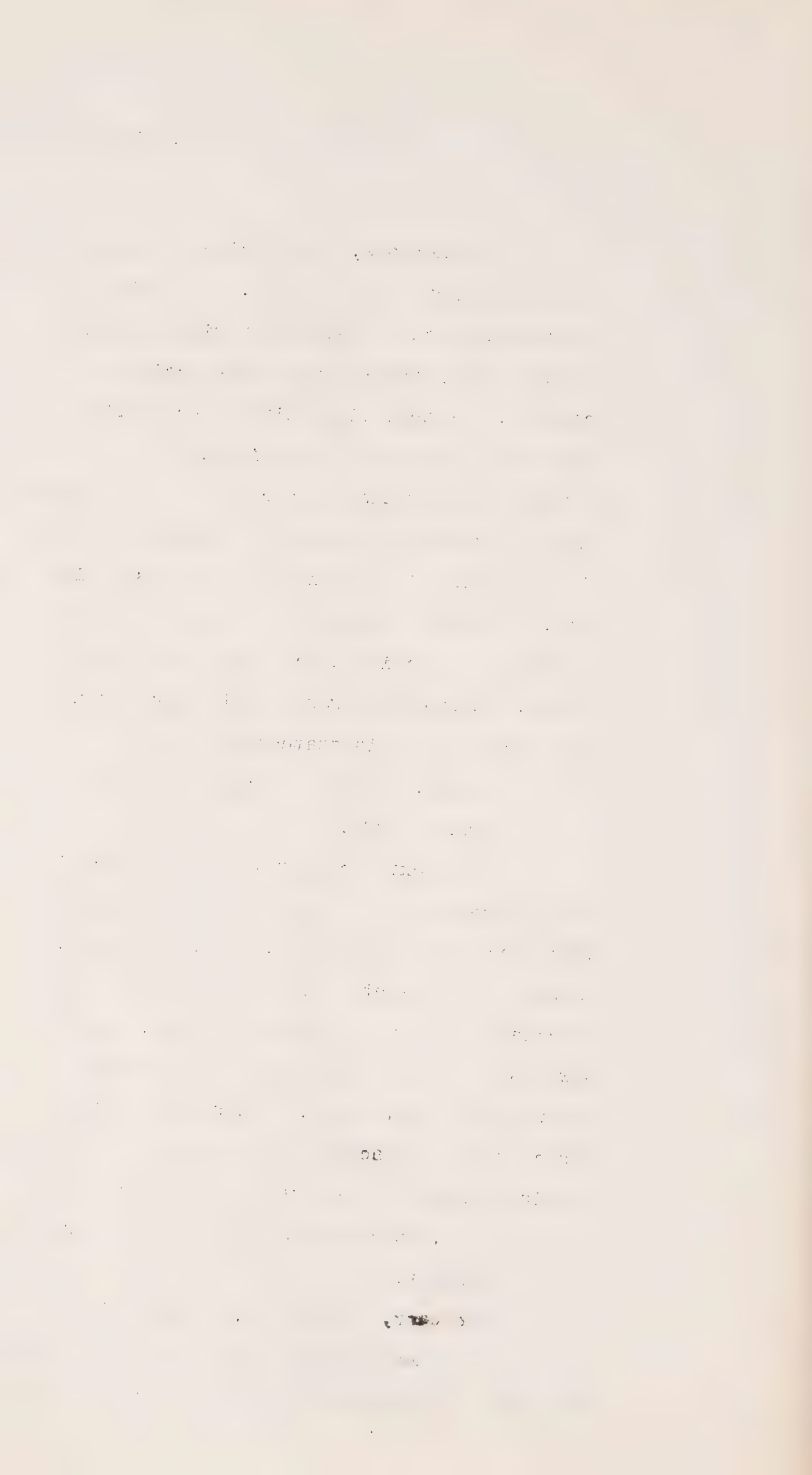
Smith, volume 60, pages 8517-8519.

Exhibit 337.

The next incident in the evidence is that Fireman Skoberg referred to an incident which occurred on March 30, 1957, at Regina. He was on a freight train pulling in at Regina to clear a following eastbound train, when he saw a slab of wood lying across the track of the westbound main line. A westbound train was closely approaching at the time. He called to his engineer to stop while he removed this slab thereby, he claimed, avoiding the possibility of a derailment.

Skoberg, volume 58, pages 8147-8147.

The head trainman was at the time riding the point of movement of 20 cars which were being



backed down the eastbound main line and was in a position to see the slab, but apparently did not see any condition that required action. You will recall that in Mr. Smith's opinion, a slab such as the one described by Fireman Skoberg would not derail an engine and that if an engine hit such a slab it would break it or push it aside.

Smith, volume 60, pages 8519-8521.

The next incident was Fireman Leleux. This was at Gleichen in March, 1957 when he, although a fireman, was running the engine and the engineer on the left side was receiving signals from the head trainman on top of the car next to the engine. The head trainman fell off the top of the car and the acting fireman called to Leleux to stop the engine.

Leleux, volume 58, pages 8148-8151.

The company investigated this accident at the time and the Commission will recall that I, through Mr. Smith, filed the statement of acting Fireman Splane and Conductor Mathieson. The crew were working on the fireman's side. The acting fireman did not take action until the ground crew gave stop signals, having noted that their mate had disappeared from the top of the car.

Smith, volume 60, pages 8521-8525.

Exhibits 338; 339.

I have two points of view there. If the ground crew had been following the best switching practice and had been giving signals direct to the engineman, the disappearance of the man from the top of the car would have been noted immediately and the stop sign would have gone to the engineman immediately.

Secondly, this shows that ground crews, yardmen and trainmen protect each other. They keep each other in view. That was a point that was raised earlier in my discussion of these incidents.

The next incident was Fireman Pasternak who described a somewhat similar incident which occurred on January 23, 1957, at Tilley when a freight train was lifting a car from the back track and he was taking signals and relaying them to the engineer. A member of the train crew on top of the car fell and fireman Pasternak warned the engineman to stop.

Pasternak, volume 58, pages 8152-8157.

Pasternak, you will recall, took the position in this that you could not give signals on the engineman's side at elevators and we have dealt with that with Mr. Smith's experience at Didsbury which showed that Pasternak was mistaken in what he did or what he said he did. If the members of the train crew had been in position to relay signals direct

to the engineman and if the trainman fell from the top of the car, the engineman would have been warned and would have stopped without any action on the part of the fireman.

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In this case, as shown in statement of Trainman Deering filed by Mr. Smith, he saw his mate fall from the ladder and gave a stop signal. It may be that Pasternak also saw the lantern disappear but the action of Trainman Deering does demonstrate what I have submitted before that ground crews watch and protect each other and are in control of the movement. They protect each other and look after their mate to see that they are in view before signals are given.

Smith - Volume 60, pages 8525-8527.

Exhibit 340.

Fireman Brennen told of an incident on June 12, 1957, when switching a way freight at Coleman with an oil-burning steam locomotive. The engineer received a signal to back down the yard to clear the main line for another train when Brennen warned him to stop because he had seen a man on his side of the train attempting to get into one of the box cars. Apparently the man was drunk and was found lying across the track.

Brennen - Volume 58, pages 8166-8170.

The company investigated this incident and it has been developed that

the conductor first saw the man attempting to cut between the cars of the train. He stopped the movement, went to the man and told him to leave the property. After the man had apparently heeded his warning the conductor started the movement, but later the man apparently returned, where he was seen by the fireman. The man was under the influence of alcohol.

Smith - Volume 60, pages 8527-8529.

Frankly, I do not think it can be reasonably contended that questions such as this add very much to the record.

Fireman Collins described an incident which occurred on June 1, 1957, on a freight train at Duncan, Vancouver Island. The train had backed over a crossing to set out cars and was about to proceed forward when the fireman saw an elderly man who was deaf step in front of the engine. Fireman Collins warned the engineman to stop.

Collins - Volume 59, pages 8355-8357.

Had there been no fireman, the head trainman would have been in a position at the front of the engine before it proceeded forward over the

crossing and would have been able to warn the engineman.

The last lookout incident in connection with road service was described by Fireman Hutton. It occurred on July 6, 1957, when an engine with a caboose was proceeding across Shaughnessy Street, Vancouver. Apparently the brakeman was on the left-hand front steps when Hutton warned the engineman to stop because of a car coming from the left. The brakeman was giving a stop signal, but could not be seen by the engineman. The car hit the engine at the point where the brakeman had been standing, but he had jumped off.

Hutton - Volume 59, pages 8364-8370.

My comment on that is that had there been no fireman, the brakeman would undoubtedly have been in his proper position which was on the right front steps in full view of the engineman moving over **this** crossing.

That concludes my review of the incidents described by Brotherhood witnesses in support of their contention that firemen are required as a lookout on diesels in road freight service.

In the light of the rebuttal

evidence and the analyses I made, it is my submission that the incidents described by the Brotherhood witnesses do not support the contention that a fireman is required for purposes of lookout on diesels in road service.

Now, I want to turn to another topic and maybe I could start it tomorrow.

THE CHAIRMAN: Yes, this would be a good point to adjourn.

---At 4.00 p.m. the hearing adjourned
until 10.30 a.m., Wednesday,
October 30, 1957.

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